Supreme Court, U.S.
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No. 95-959

In The

Supreme Court of the United States

October Term, 1995

640 BROADWAY RENAISSANCE CO.,

Petitioner,

vs.

JOHN EISNER, et al. and 15 Other Cases Consolidated for Purposes of a Joint Appeal,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of New York, Appellate Division, First Judicial Department

REPLY BRIEF FOR PETITIONER

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Multiple Dwelling Law - all sections

Loft Board "Rules" and "Regulations"(hundreds of pages) - not codified - including, in part, those reproduced by Petitioner - these are purportedly issued pursuant to a Mayoral "executive Order". (See App."H"; "V" ; "X" and "II", *e.g.)*

REPLY - I - FEDERAL QUESTIONS HAVE BEEN RAISED FOR MORE THAN 10 YEARS - THE NEW YORK COURTS HAVE SIMPLY IGNORED THEM.

Tenants-Respondents make clear misrepresentations to the Court by claiming Petitioner "never raised any Federal question in the State Court proceedings." In fact, Petitioner devoted pages 36 through 39 of its Brief in the Supreme Court, 1st Dept. App. Div. (September 21, 1994 - Appendix Q) - to Federal questions. Furthermore, Petitioner raised federal constitutional questions at the "Loft Board" hearings themselves; See, Loft Board Order in 1988, Appendix "P", pp. 98, 99; Petitioner stated in its Interim Multiple Dwelling application, dated 1983, that it was filed "under protest" and "under duress", and attached a two page Rider setting forth constitutional objections (Appendix R). In IMD renewal application dated August 14, 1991, Petitioner stated:

> "THIS 'INTERIM MULTIPLE DWELLING' REGISTRATION IS FILED UNDER DURESS, UNDER PROTEST, AND UNDER THREAT OF CRIMINAL PROSECUTION. NO VOLUNTARY WAIVER IS INTENDED OF ANY CONSTITUTIONAL OR OTHER LEGAL RIGHTS THAT OWNER OF THE BUILDING POSSESSES UNDER FEDERAL OR STATE LAW, COMMON LAW, OR THE EXPIRED LEASES FOR THE PREMISES." (EMPHASIS IN ORIGINAL)

Furthermore, in Petitioner's Notice of Motion for Leave to Appeal to New York Court of Appeals, one of the questions presented was:

> "2. Does the Loft Law's effect, as applied by the IAS Court and the Appellate Division, of a permanent forfeiture of rent that accrued prior to a landlord's compliance with the legalization timetables of the 1992 amendments to the Loft Law constitute an unconstitutional regulatory and physical taking of property."

All these documents were public records served upon Respondents and part of Record below.

The real issue herein is whether the Legislature can retroactively reward Respondents' criminal behavior, by confiscating from Petitioner, and granting to Respondents more than a million dollars of rent monies owed, plus granting estates, contrary to owner's fundamental ownership rights, all as part of a retroactive legislative scheme to

transfer substantially all aspect of real estate ownership to the illegal occupants.

The Loft Laws did create this confiscation of rent from Petitioner (from four years to eight years, in some cases), because all these Respondents' leases expired prior to or in 1984, and respondents are only holding over by virtue of legislative leaseholds retroactively granted to them by the Loft Laws - thus making the Multiple Dwelling Law, Sec. 301 "forfeiture provisions" applicable. Were it not for the Loft Laws (of which §301 is a part), Petitioner would not have to suffer these retroactively-imposed, forced (lifetime or longer) leaseholds, and Respondents' claims to 4-8 years of rent-free use of owner's building - based solely upon their own deliberate illegal conduct - would fail.[1]

Furthermore, there was no "public emergency"; simply the greedy desire of a vocal group of a few thousand who persuaded the Legislature into retroactively granting them leaseholds in total annihilation of property rights, and lease contracts that were voluntarily made at arms length. This action is to recover four to eight years of rent owed by various tenants, assignees, sublessees and other occupants of the building, up to and including August, 1992. This legislative transfer of assets to Respondents from Petitioner is confiscatory and punitive.[2]

Furthermore, Petitioner has substantially renovated the building since 1982[3]. The Loft Laws, to rub salt into wounds, not only required a multi-million dollar conversion of the building, retroactively imposed upon it - as a gratuitous windfall and reward to the Legislatively-favored tenants - but also forced the payment of an extortionate monetary penalty,

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[1] Attached as App "W" is a recent ad in "Village Voice" newspaper wherein a non rent paying occupant of this building is purporting to "sell" "his" loft for $35,000, with a "lifetime" lease. He has paid no rent since 1987.

[2] Another misrepresentation to this Court by Respondents is that Petitioner did nothing to comply with the Loft Laws since 1982 - that is preposterous. In fact, as Respondents admit, Petitioner first filed registration under the Loft Law in 1983, soon after the law was passed - but under protest and duress.

[3] See Appendix "S".

to a New York City agency, calculated at $9-11 per square foot of building[4] - more than $400,000.

The entire basis of this legislation is the deliberate and willful criminal occupation of the buildings by the Respondents - by sleeping in the building - after they signed leases specifically covenanting not to do so. Even assuming *arguendo* that the landlord knew of this illegal occupation by the tenants, it was the tenants who did the illegal occupation - not the owner. The Legislature cannot reward these criminal activities of Respondents by granting of permanent interests in the real estate by retroactive legislative *fiat*, and confiscating years of rent payments; The forfeiture of the rent, necessary to "legalize" the building, is also totally perverse and counter productive; thus there is no rational relationship to any purported problem[5].

Since the Loft Laws were totally retroactive, there was no opportunity to avoid "compliance". The illusory "hardship" exemption lapsed by statute five years before this building was designated, and before a "coverage" application was filed; furthermore the purported "exemption" required "registration" under the statute, with huge forfeit of rights; including the forced recording of a covenant running with the land for 15 years (MDL §285-2); (rendering title unmarketable, and violating mortgage provisions); and required sworn affidavits of complex financial information with respect to future income, expense and capital investment that was unknown or unknowable. The regulations defining "hardship" were published after the exemption period expired. Furthermore, since the statute contained no definition of "hardship"; it is therefore obvious,

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[4] Of course the Petitioner legally fought and protested this extortionate monetary seizure since it was totally retroactive and confiscatory; the legislative scheme later dropped this extortionate requirement.

[5] Tenants are not bound by any obligation of any kind and are free to vacate the premises at any time, without any penalty or obligation, and are legislatively granted "rights" to sell to strangers, property of the owner and to usurp and pocket such proceeds to their own use and benefit. This is in addition to all the monies that were converted by Respondents who sublet their lofts (at large profits), and did not pay rent to Petitioner, and/or "sold" "their" lofts for large sums, while paying no rent. (See App. W)

as admitted, why no such "hardship" exemption was ever granted. While it is true that Petitioner lawfully resisted the increasingly-confiscatory and burdensome and bankrupting features of the retroactive Loft Laws and resisted the seizures by Legislature of its fundamental property rights, with their gratuitous transfer to Respondents, this is not "without explanation or excuse". The specific damages to Petitioner in this action, (confiscating more than a million dollars of rents owed to it since before September 1992), is only the tip of the iceberg of the staggering damage and imposed burdens upon the Petitioner herein, which have wiped out the concept of property ownership by the whim of the Legislature, for this particular special interest group.

II - THIS CASE IS OF GREAT PUBLIC IMPORTANCE BECAUSE (a) IT DIRECTLY AFFECTS THE ECONOMIC FUTURE OF MORE THAN 800 SUBSTANTIAL BUILDINGS IN NEW YORK; (B) MANY BUILDINGS HAVE MORTGAGES FROM BANKS WHICH ARE EITHER FEDERALLY INSURED OR REGULATED; (C) THIS UNFETTERED STATE SEIZURE OF PROPERTY WILL SEVERELY IMPACT ON THE FUTURE OF PRIVATE INVESTMENT IN REAL ESTATE, BANKING AND FINANCE IN THE CITY AND STATE OF NEW YORK, AND, *ERGO*, NATIONALLY.

The fundamental rights of private property ownership have been eviscerated, by this retroactive confiscation of four to eight years rent (and vast other property rights) at the expense of the Petitioner. In the instant case the legislation was the direct and proximate cause of the bankruptcy of Petitioner herein, and said bankruptcy caused the default in a million dollar mortgage held by a national bank ("L.S.B."); this bank, which like many others, had and has extensive mortgage loans on office/loft buildings in the amounts of hundreds of millions, if not billions of dollars; these are all put at risk by this legislative destruction of private property.

Without rent payments there is no "real estate". L.S.B. was itself forced into insolvency.[6]

It is not merely 640 Broadway which has been legislatively bankrupted - and deprived of rental income (4-8 years worth) retroactively, but at least 800 building owners in New York are at risk. Who will be the target of the next political raid on private property ownership by the next vocal political group to curry legislative favor (next? Teamsters? Doctors? Felons? Plumbers? Firemen? Grand-mothers? Ice-Skaters? Shoemakers?); many other groups-as well as so-called "artists"-are groups supposedly worthy of legislative "protection", but the legislature has no constitutional right to take owners property rights, and hand them over to a favored few, unless the state pays for the taking. What limits are there on the legislature at all, if this kind of arbitrary and irrational, retroactive seizure and redistribution of property rights is permitted?[7] This case is of great public importance to the preservation of private property rights in New York and the United States, and *certiorari* should be granted to prevent this banana republic legislation from spreading like the corrupt fungus it is.

III - IF A STATE LEGISLATURE IS PERMITTED TO RETROACTIVELY ENACT MASSIVE UNCONSTITUTIONAL VIOLATIONS, BY THE SIMPLE USE OF SELF-CREATED 'EMERGENCY' VERBIAGE, THEN THERE IS NO CONSTITUTION.

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[6] L.S.B. carried many mortgage loans on its books, which became uncollectable after the Loft Laws took effect, and thereafter. L.S.B. had a forced sale of its million dollar mortgage for $350,000 (directly incurring a $650,000 capital loss); many banks, have had and will suffer huge losses in their mortgage portfolios; losses to the banks, federal insurers and/or stock holders, - or the taxpayers.

[7] Can the Legislature constitutionally grant auto owners parked in a certain garage last night, the right to permanently occupy that space, at a fixed and much lower rental than previously agreed to, and retroactively require that not only the garage owner polish and wax the car every night, but also fill it up with gasoline, replace the tires every year, and rebuild the parking space into a heated, air conditioned garage with sufficient plumbing facilities to maintain a chauffeur's apartment-all at no additional cost and, in fact, lowering the agreed upon rent for the space and also nullifying a legally contracted cost of living increase clause?

It cannot be disputed that the New York Legislature, pushed by a small vocal minority of so called "artists", retroactively singled out more than 800 buildings in New York and imposed upon them horrendous and permanent financial and legal burdens, and granted to these few thousand tenants (and even strangers) long term estates in owner's property - based solely upon the illegal sleeping in these buildings by these same tenants, for a retroactively and arbitrarily defined period of April 1,1980 to December 1, 1981 - which period ended 6 months prior to the date of passage of the law in June, 1982. It has never been denied that these arbitrary and retroactive dates chosen - which resulted in 640 Broadway's "designation" as a "loft building" - were established from the existing lists of members of loft tenants associations. This was pure special interest legislation, where the legislature retroactively took a very specific set of facts, all of which occurred prior to the passage of the law, and then retro-actively mandated staggering and bankrupting legal and eco-nomic burdens upon these retroactively targeted owners [8]. The seizure of rent income is the seizure of the real estate itself; furthermore, the Loft Laws rent forfeitures are not rationally related to any legitimate state purpose. *Agins v. Tiburon*, 447 U.S. 255, 260 (1980). *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).. [9] *Lindsey v. Normet, supra.*

The Loft Laws grant these deliberate illegal hold-over tenants, as a reward for their past illegal conduct, rent-free occupation of owner's premises for indefinite periods, and legally enforceable long-term interests in the building - creating a new breed of "nobility" - this is proscribed by the Constitution.[10]

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[8] under the guise of a purported "emergency" in the residential housing market in New York City (said purported "emergency" being a legislative continuation of the Congressional declaration of emergency of 1943 - when the nation was involved in the greatest world war in history).

[9] Even if the Legislature had the power to totally abrogate leases, it could not constitutionally delegate that power to actual tenants and their political cohorts - all appointed by the Mayor. The entire "Loft Board" structure is self-interested and unconstitutional.

[10] These college educated, white-collar "yuppies" - wealthy and Social Register members, are not "starving artists"; all are profiteering from the

Accordingly, summary judgment should have been granted to Owner, for at least the long overdue rents for 4-8 years. The failure to so apply the 1992 Loft Law Amendments works an unlawful seizure, constitutes a clear taking of private property without just compensation, and impairs basic lease contracts. The 1992 Amendments were supposedly passed to remove many unconstitutional features of prior law. If this Court permits Legislatures *carte blanche* nullification of all constitutional rights by the simple declarative use of the word "emergency", then the Constitution is rendered totally meaningless.

Furthermore, the retroactive application of the Rent Stablization Laws of 1974, *McKinneys Unconsol. Laws* §§8600, *et seq.* which imposes vast new financial and legal burdens upon owner, never contracted (or paid for) violates or negates virtually every substantive clause of the lease the owner agreed to (See App. "M"); if legislatures can do this by writing "emergency", then no property owner, or society is safe.

IV. THIS RETROACTIVE LEGISLATIVE GRANTING OF PROPERTY RIGHTS TO PERSONS WHO, BY DEFINITION, COMMITTED CRIMINAL ACTS BY ILLEGALLY RESIDING IN "LOFT' BUILDINGS, EITHER AS A REWARD FOR THEIR PAST CRIMINAL CONDUCT OR AS "PUNISHMENT" TO OWNER - IS AN UNCONSTITUTIONAL SEIZURE OF PETITIONER'S PROPERTY AND IMPAIRMENT OF CONTRACT.

The sole beneficiaries of the Loft Laws were persons illegally residing in non-residential buildings during the retroactively selected 1980/1981 period. The Loft Laws of June, 1982, abrogated virtually every provision of existing leases, and every single legislative change is of direct benefit to the tenant, and a burden upon the landlord. [11] Just a few:

Loft Laws,subletting and "selling" "their" lofts to strangers, in total violation of the lease, and enjoying large windfalls such as this million dollars in rent - the absence of which made, and makes it impossible for the building owner to comply with the stated objective of "legalizing" the building, in any event.

[11] This mandatory retroactive compliance with residential rules alone, retroactively subjects the building to a vast panoply of building laws, codes

(1) The fixed term of the lease is extended to an indefinite term, which has reached twelve (12) extra years already under the statutory scheme, and which is designed to be life-time or permanent. (*See*, MDL §§286-13); "Rent Stabilization Laws". *Supra;* (2) As here, M.D.L.§302 directly prohibits and confiscates the collection of all rent or use and occupancy owed and unpaid by Respondents through September, 1992; (3) vast new repair, services, expenditures and other financial and legal obligations and renovation requirements contrary to the express terms of the lease are imposed; (4) the rent is retroactively lowered; (5) the reasonable cost of living increases are abrogated. The Legislature had no constitutional authority to transfer virtually the entire bundle of property rights (especially rent payments) from the owner to the tenant retroactively, *North Shore Cycles, Inc. v. Yamaha Motor Corp.*, 919 F2d 1041 (5th Circuit, 1990) to grant long-term leaseholds totally abro-gating the contract between the parties and imposing crushing financial burdens upon the owner, in direct contravention of the explicit provisions in the lease. This total destruction of contractual expectations is clearly substantial impairment in violation of contract clause. If this retroactive legislation is constitutional, then all contracts are essentially being written with invisible ink, and not worth the paper upon which they are printed. [12]

V - NEITHER *SPRING REALTY CO. V. NEW YORK CITY LOFT BOARD* NOR *640 BROADWAY RENAISSANCE CO. V. CUOMO ET AL*, ARE CONTROLLING PRECEDENT HEREIN.

Spring Realty, supra, was premature and speculative, since there was no "designated" building under the Loft Laws; here is an actual case and controversy, <u>after</u> official "designation" by the Loft Board in 1988, which caused actual damage and bankruptcy. The Supreme Court properly declined to review *Spring Realty* for "want of a substantial federal question" because, the record clearly indicated, Loft

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and statutes that relate solely to residential buildings and not to commercial buildings. See Appendix "U" for partial list.

[12] Also making impossible the so-called "legalization" of the building, including the huge expenses of removing and replacing all the illegal work done by tenants, with no permits or licensed contractors.

Laws had never been applied to those buildings; under Art. III, Sec. 1 of the Constitution, federal courts only have jurisdiction over actual cases and controversies. *Rizzo v. Goode*, 423 U.S. 362 (1976)[13]. Since *Spring Realty's* buildings were not "designated" by the Loft Board, and no actual damage or taking was proved, *Spring Realty* was wanting a substantial federal question; but the exact opposite is true here.

***640 Broadway v. Cuomo* is not a bar to this action.**

In 1990, there had been no holding by the New York Courts that, as here, Petitioner was permanently forfeiting 4-8 years of rent payments; the 1992 legislation sued under herein, - purported to grant Petitioner all procedural rights to collect any rents or use and occupancy due since 1980. However, the N.Y. Courts, in the instant action, failed and refused to appropriately apply the 1992 Amendments, thereby unconstitutionally confiscating Petitioner's 4 to 8 years of rent.[14]

V - THE RESPONDENTS "SPECIAL PERMIT" ARGUMENTS ARE PURE RED HERRINGS.

It is true that Petitioner voluntarily filed a special permit application to the City Planning Commission in 1982 - but this was before the passage of the Loft Laws on June 21,

[13] *Spring Realty* was a state declaratory judgment action, and plaintiffs merely "assumed" that they were covered; no proceedings had been commenced to "designate" such buildings. Thus, an advisory opinion was being requested. Furthermore, in *Spring Realty*, owners were not affirmatively required to obtain a discretionary zoning variance or "special permit". In *Spring Realty*, the City claimed no present showing of a taking, prematurity and conjecture, and that building owners were making "conclusory", "alarmist speculations" without support in the statute or in the record. Here, official "designation" as an "interim multiple dwelling" has occurred, a public document, clouding owner's fee title and requiring dedication of the building to purported "public" use. Immediately after such "Loft Board" designation (or prior), all "designated" tenants stopped paying rent or use and occupancy, claiming such rights under the Loft Laws, and Petitioner was rendered bankrupt because it could not collect any rent or use and occupancy.

[14] Furthermore, *640 Broadway Renaissance v. Cuomo* was an action under §1983 against the State for a declaratory judgment; here, the State is not a party and solely monetary damages are sought from the persons who used and occupied the building - what they contracted to pay - but did not.

1982, which drastically and fundamentally changed all the legal, financial and physical rules applicable thereto. The retroactive imposition of the Loft Laws made the "special permit" ruinous and inevitably bankrupting, as happened here. Under the Loft Laws, the "special permit" became a mandated expropriation by the Legislature. (See, App. "FF", 'GG' ,"HH"). It was the specific obligation of the tenant under the lease to do all required construction and all "code compliance work" (App. "M" & "T"), including legal wiring and plumbing. The Loft Laws retroactively changed all legal and financial burdens from the tenant to the landlord. Thus, the forced 1982 "special permit" became extortionate; and was made totally irrelevant by the 1987 amendments to Loft Laws; and no longer required, voluntary or desirable[15].

CONCLUSION

This Court should grant *certiorari* and, thereafter hold that the Loft Laws and amendments must be applied to permit collection of past and accrued rent and use and occupancy due; the 1992 Loft Law amendments were supposedly "remedial" in nature and must be constitutionally construed so as to avoid this extortionate rent confiscation. Otherwise an unconstitutional forfeiture of huge rent arrears results.If this legislation, which retroactively seizes and redistributes the fundamental rights of property ownership, as applied here, is constitutional, then there are no contracts, and there is no Constitution.

Dated: New York, N.Y
March 25, 1996

Respectfully submitted.
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[15] With the Respondents refusal to permit access and other obstructionist tactics, it is ludicrous to fault Petitioner for not "legalizing" the building as a Class A multiple dwelling after 14 years since the Loft Law was passed; it has simply been financially, structurally, legally, and procedurally impossible for Petitioner to do so. The City Loft Board admitted in a letter to all Loft Owners dated Dec. 23, 1993, (App. "Y"), that only 27% of buildings had been "legalized" after eleven years. Furthermore, in September 1991, under duress and protest, Petitioner duly registered the building and was forced by the Loft Board to pay all the prior years "filing fees", including the filing fes for the years covered by the within action.

APPENDIX Q

Excerpt from Petitioner's Brief dated September 21, 1994 to NY Appellate Division

G. The 1992 Loft Law Amendments Must Be Given Retroative Effect in Order to Avoid an Unconstitutional Taking of Property.

In order to avoid an unconstitutional taking of property, the Loft Law, as amended, must be interpreted so as to remove the statutory impediment to rent collection retroactively, as well as prospectively, once the loft building has been registered and is in compliance with the Loft Law. A retroactive and permanent forfeiture of more than four (4) years of rent payments, by legislative fiat alone, would violate the New York State Constitution, Article 1, Sections 6 and 7, which provide respectively:

No person shall be deprived life, liberty or property without due process of law.

Private property shall not be taken for public use without just compensation.

Based upon the Court of Appeals' holding in Seawall Associates v. City of New York, 74 N.Y.2d 92, 544 N.Y.S.2d 542 (1989), the Loft Law, if interpreted by the courts to effect a permanent forfeiture of all rent due and owing to Renaissance for the period 1988 to 1992, would constitute both a regulatory taking and a physical taking of Renaissance's property and its fundamental right, as a property owner, to collect rent for the use and occupancy of its property.

In order to avoid an unconstitutional taking, this Court *must and should interpret the 1992* amendment to the Loft Law to mean that, once an owner has registered the building under the Loft Law, and has been deemed in compliance with the Loft Law, all rent owed should be collectible. This Court should construe the Loft Law so as to permit the owner to collect its rents due, without a forfeiture, as provided for in the lease agreements, or the value of the use and occupancy of the owner's real estate, as well as the value of the multitude of services required to be provided by the owner, including tax payments, fuel expenses, repairs and maintenance, mortgage payments and all other costs of operation.

As aptly noted by the Court of Appeals in Seawall:

> "Moreover, to constitute a physical taking, the occupation [of private property] need not be by the government itself, but may be by third parties under its authority (Loretto v. Teleiprompter Manhattan CATV Corp., supra, at 432, 433, n.9, 102 S.Ct.at 3174, 3175, n.9)..."

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Although the Supreme Court has not passed on the specific issue of whether the loss of possessory interests, including the right to exclude, resulting from tenancies coerced by the government would constitute a per se physical taking, we believe that it would. Indeed, it is difficult to see how such forced occupancy of one's property could not do so. By any ordinary standard, such interference with an owner's rights to possession and exclusion is far more offensive and invasive than the easements in Kaiser Aetna or Nollan or the installation of CATV equipment in Lorettg. (citations omitted)

Even if Local Law 9 [the SRO law] were not held to effect a physical taking, it would still be fatally invalid as a regulatory taking. 'Suffice it to say that government regulation - by definition - involves the adjustment of rights for the public good. often this adjustment curtails some potential for the use or economic exploitation of private property' (Andrius v. Allard, 444 U.S. 51, 65, 100 S.Ct. 318, 326, 62 L.Ed. 210. But the constitutional guarantee against uncompensated takings is violated when the adjustment of rights for the public good becomes so disproportionate that it can be said that the governmental action is forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole' (Armstroncf v. United State, supra, 364 U.S. at 49, 80 S.Ct. at 1569) . . . It is basic, however, that such a burden-shifting regulation of the use of private property will, without more, constitute a taking: (1) if it denies an owner economically viable use of property or (2) it does not substantially advance legitimate State interests. (citations omitted)

By contrast, Local Law No. 9 totally prohibits the sole use entirely permissible before the enactment of the law for which investment properties are purchased:commercial development. As a substitute, it decrees that the properties must be used for SRO housing and that the owners must be satisfied with the diminished financial returns from such use.

The Loft Law, with its coerced conversion of loft buildings to rent reulgatred residential buildings for "artists," cannot constitutionally be interpreted to impose a permanent

forfeiture of rent. The collection of rent is the most fundamental aspect of real estate ownership. The Legislature cannot, through retroactive "regulation," simply take away or forfeit that fundamental property right, for any length of time, through "regulatory" legislation without violating the New York State Constitution. In order to avoid such constitutional violation and permanent forfeiture of property rights, the Court should properly grant retroactive effect to the 1992 Loft Law amendments so as to permit an owner in compliance to recover all rents due and owing.

RIDER ANNEXED TO AND MADE PART OF INTERIM MULTIPLE DWELLING REGISTRATION APPLICTION

THIS INTERIM MULTIPLE DWELLING REGISTRATION APPLICATION IS BEING FILED UNDER PROTEST AND UNDER DURESS.

Article 7C of the Multiple Dwelling Law, and Section 284(a) of the Multiple Dwelling Law, as it purports to apply to these promises, is unconstitutional and unlawful for numerous reasons including, but not limited to the following:

(1) Article 7C of the Multiple Dwelling Law constitutes an unconstitutional taking of applicant's property without due process of law.

(2) Article 7C of the Multiple Dwelling Law constitutes an impairment of the obligation of contracts of Article 1, Section 10 of the United States Constitution, and Title 42, United States Code, Sec. 1983.

(3) Article 7C of the Multiple Dwelling Law constitutes an unlawful and unconstitutional delegation of legislative authority in violation of the New York State Constitution and the New York City Charter and Administrative Code to a group of private individuals purporting to constitute the "New York City Loft Board".

(4) Article 7C of the Multiple Dwelling Law as it purports to apply to these premises and the Interim Multiple Dwelling Application promulgated by the "New York City Loft Board" constitutes a invasion of privacy and requires information to be supplied by the applicant which constitutes an invasion of privacy and a taking of property without due process of law and without compensation therefor in violation of the New York State and United States Constitutions.

(5) Section 1105 of the New York State Charter and the so-called "Mayor's Executive Order 66" and the purported rules and regulations relating to registration of interim multiple dwellings purportedly promulgated by the New York City Loft Board, Dated November 30, 1982, are unconstitutional, illegal and an unlawful delegation of legislative authority and together constitute an unconstitutional taking of applicant's property without due process of law and without compensation therefore in violation of the New York State and United States Constitutions.

THEREFORE, THIS APPLICATION IS FILED BY 640 BROADWAY RENAISSANCE CO., UNDER PROTEST AND UNDER DURESS, AND DOES NOT CONSTITUTE A WAIVER OF ANY LEGAL OR CONSTITUTIONAL RIGHTS OF APPLICANT.

APPENDIX "5"

Exhibit V - **Affidavit Of** Hyman Schermer **Sworn** To April 15, 1993 (1302-1316)

SUPREME COURT OF THE STATE OF NEW YORK : COUNTY OF NEW YORK

640 BROADWAY RENAISSANCE COMPANY,
Debtor-in-Possession

Plaintiff,

-against-

NANCY HOFFMAN, a/k/a NANCY GEISMAN a/k/a NANCY HOFFMAN GEISMAN,

Defendants

Index No. 29602/92

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION

TO BE CONSOLIDATED WITH INDEX NUMBERS:

23830/92
23831/92
23832/92
23833/92
23834/92
23835/92
23836/92
23838/92
23839/92
23840/92
23841/92
23842/92
23843/92
23844/92
23845/92

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

HYMAN SCHERMER, being duly sworn, deposes and says:

1. I am a licensed real estate broker and real estate salesman for over 20 years. I make this affidavit in support of the Plaintiff's motions in the above matters, (all 16 cases) with the 15 other tenants (or former tenants) at the premises 640 Broadway, New York, New York.

2. I was the broker involved in the purchase of this building in 1978/79 by 640 Broadway Renaissance Company, and I inspected the building many times in 1978/79, in the process of selling it. At that time, it was a

virtually abandoned and empty broken-down manufacturing building; in the past twelve

1

years or so, 640 Broadway Renaissance Company has virtually completely renovated this building, replacing all the major systems, including, but not limited to: (1) installing a new boiler in 1988 (See Exhibits) (after the Loft Board decision) ; (2) redoing the elevator (see contracts) , lobby, hallways and staircases (see photos), the roof and main plumbing and electrical systems, and all public areas.

3. It has also installed new mailboxes, a new intercom system, and new front doors. See photos and copy of contract.

4. Contrary to the claims of the holdover tenants in this building, they are working and living in one of the finest and best loft buildings - at artificially depressed and subsidized rents.

5. The net effect of their claims, if granted, would be to have the tenants steal more than a million dollars in back rent, (ranging from five to 8 years) - based solely upon their own fraudulent and illegal conduct.

6. The loft laws were not meant to, and do not cause any forfeiture of rent - while the tenants were willfully using and occupying the premises, as holdover tenants, they must pay for their use and occupancy; the entire real estate system fundamental to our society and economy is based upon that simple fact. Without the assurance of rent payments, buildings and cities cannot be built, financed or maintained and it would be against public policy to permit these tenants to just rip-off a million dollars of back rent - which will reduce the value of the

2

building for real estate purposes, and assist these confessed illegal occupiers and reward them for their misdemeanors. See, Multiple Dwelling Law § 304.1.)

7. Furthermore, to grant the tenants even further ill-gotten gains will greatly reduce the value of all real estate in New York State, and discourage investment in New York across the board as still further evidence - if the statute is so interpreted that the New York State constitutional guarantee of protection of private property is a meaningless phrase.

8. The plaintiff has invested hundreds of thousands of dollars in rehabilitating and reconstructing this virtually abandoned building, and totally renovated it and it is now fully rented, with a waiting list!! It has become a highly desirable building, and is considered one of the finest lost buildings in the City. it was the first "Empire State Building" (see attached), with spacious lofts of approximately 2,000 sq.ft each (larger than the average single family home) with beautiful large windows on three sides of the building, and beautiful architectural details and high ceilings; I would be proud to rent these lofts to anybody - and there are no visible "hazardous" or "unsafe" conditions in the building (those are utter and self-serving lies from the tenants, designed to bolster their claims for not paying many years' rent, solely because of their own willful breach of the state's criminal code and the city's zoning laws.

9. I recently visited and inspected the building (in the

winter of 1992) and carefully examined Loft Unit 7E, which had been recently vacated by one defendant, Nancy Hoffman. THE LOFT WAS ABSOLUTELY BEAUTIFUL, LUXURIOUS AND HIGHLY DESIRABLE. In my professional opinion, it had a rental value of at least $2,300 per month, and would be exceedingly easy to rent at that price. (I have been advised that it is already rented)

10. The photographs submitted as Exhibits demonstrate how nice, clean and well maintained this loft, and the building are, and how desirable, and not "hazardous". (That is attempted revisionist history by the tenants]

11. I personally tested all the plumbing fixtures in the Loft 7E kitchen and bathroom, and they all worked properly; the water pressure and the elevators were running fine, and there were no hazardous conditions of any kind visible in the lobby, stairwells, or any public or private areas. I would be proud to show the Court this building - and cordially invite Special Term to do so - because the tenants are plainly lying - for pure greed - in order to reap an unconscionable and unjust enrichment of pocketing the money for use and occupancy that rightfully belongs to the owners of the building.

/s/
HYMAN SCHERMER

SWORN To before me this
of April, 1993.

/s/
Notary Public

APPENDIX T

Excerpts of lease - Additional clauses - all abrogated by "Loft Laws".

3. Alterations: Tenant shall make no changes in or to the demised premises of any nature without Landlord's prior written consent. . . .All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Landlord in Tenant's behalf, shall, upon installation, become the property of Landlord and shall remain upon and be surrendered with the demised premises unless Landlord, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, elects to relinquish Landlord's right thereto and to have them removed by Tenant, in which event, the same shall be removed from the premises by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this article shall be construed to give Landlord title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installations as may be required by Landlord, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. . . Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Landlord and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Landlord may require. . .

4. Repairs: . . . (See Appendix "M") If the demised premises be or become infested with vermin, Tenant shall at Tenant's

expense, cause the same to be exterminated from time to time to the satisfaction of Landlord. . .

6. . . .Except as provided in Article 29 hereof, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant may, after securing Landlord to Landlord's satisfaction against all damages, interest, penalties and expenses, including, but not limited to, reasonable attorneys fees, by cash deposit or by surety bond in an amount and in a company satisfactory to Landlord, contest and appeal any such laws, ordinances, orders, rules, regulations or requirements provided same is done with all reasonable promptness and provided such appeal shall not subject Landlord to prosecution for a criminal offense or constitute a default under any lease or mortgage under which Landlord may be obligated, or cause the demised premises or any part thereof to be condemned or vacated. Tenant shall not do or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Landlord with respect to the demised premises or the building of which the demised premises form a part, or which shall or might subject Landlord to any liability or responsibility to any person or for property damage, nor shall Tenant keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization or other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fir insurance applicable to the building, nor use the premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. Tenant shall pay all costs, expenses, fines, penalties or damages, which may be imposed upon Landlord by reason of Tenant's failure to comply with the provisions of this article and if by

reason of such failure the fire insurance rate shall, at the beginning of this lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Landlord, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Landlord which shall have been charged because of such failure by Tenant, and shall make such reimbursement upon the first day of the month following each outlay by Landlord. In any action or proceeding wherein Landlord and Tenant are parties a schedule or "make-up" of rate for the building or demised premises issued by the New York Fire Insurance Exchange, or other body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to said premises. . .

11. Assignment: Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Landlord in each instance. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Landlord to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or underletting.

13. Access to Premises: Landlord or Landlord's agents shall have the right (but shall not be obligated) to enter the

demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Landlord may deem necessary and reasonable desirable to the demised premises or to any other portion of the building or which Landlord may elect to perform following Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities.

18. Remedies of Landlord and Waiver of Redemption: In case of any such default, re-entry, expiration and/or dispossess by summary proceedings or otherwise, (a) the rent shall be come due thereupon and be paid up to the time of such re-entry, dispossess and/or expiration, together with such expenses as Landlord may incur for legal expenses, attorneys' fees, brokerage, and/or putting the demised premises in good order, or for preparing the same for re-rental; (b) Landlord may re-let the premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms, which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Landlord as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease.

19. Fees and Expenses: If tenant shall default in the observance or performance of any term or covenant on tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, then, unless otherwise provided elsewhere in this lease, landlord may immediately or at any time thereafter and without notice perform the obligation of tenant thereunder, and if landlord, in connection therewith or in connection with any default by tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to attorney's fees, in instituting, prosecuting or defending any action or proceeding, such sums so paid or obligations incurred with interest and costs shall be deemed to be additional rent hereunder and shall be paid by tenant to landlord within five (5) days of rendition of any bill or statement to tenant therefor, and if tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by landlord as damages. • • •

20. No Representations by Landlord: Neither Landlord nor Landlord's agents have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition, and agrees to take the same "as is" and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects.

All

understanding and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Landlord and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect as abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

21. End of Term: Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Landlord the demised premises, broom clean, in good order and condition, ordinary wear excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

24. No Waiver: The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations set forth or hereafter adopted by Landlord, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord.

30. Elevators, Heat, Cleaning: As long as Tenant is not in default under any of the covenants of this lease Landlord shall ***(b) furnish heat to the demised premises, when and as required by law, on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m.; (c) at Landlord's expense cause to be kept clean the public halls and public portions of the building, which are used in common by all tenants. Tenant shall at Tenant's expense, keep the demised premises clean and in order, to the satisfaction of Landlord, and for that purpose shall employ the person or persons, or corporation approved by Landlord. Tenant shall pay to Landlord the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Landlord to Tenant at such time as Landlord may elect and shall be due and payable when rendered, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Landlord.

38. Glass: Tenant shall replace, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the demised premises. Tenant shall insure, and keep insured, at Tenant's expense, all plate and other glass in the demised premises for and in the name of Landlord. Bills for the premiums therefor shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rent.

39. Permits: Tenant covenants that Tenant will not use or suffer or permit any person to use the demised premises for any unlawful purpose and to obtain and maintain at Tenant's sole cost and expense all licenses and permits from any and all governmental authorities having jurisdiction of the demised premises which may be necessary for the conduct of Tenant's business therein. Tenant further covenants to comply with applicable laws, resolutions, codes, rules and regulations of any department, bureau, agency or any governmental authority having jurisdiction over the operation, occupancy, maintenance and use of the demised premises for the purposes set forth herein. Tenant will indemnify and save Landlord harmless from and against any claims, penalties, loss, damage or expense imposed by reason of a violation of any applicable law or the rules and regulations of governmental authorities having jurisdiction thereof related to Tenant's use and occupancy.

40. Indemnity: Tenant agrees to indemnify and save harmless Landlord against and from all claims by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from any work or thing whatsoever done by or on behalf of Tenant, in or about the demised premises, and will further indemnify and save Landlord harmless against and from and all claims arising from any breach or default on the part of Tenant in the performance of any

covenant or agreement on the part of tenant to be performed, pursuant to the terms of this lease, or arising from any act or negligence of Tenant, or any of its agents, contractors, servants, employees or licensees, and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in or about any such claim or action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, covenants to resist or defend, at Tenant's expense, such action or proceeding by counsel reasonably satisfactory to Landlord.

54. COST OF LIVING ADJUSTMENT: Recognizing the length of the term of the lease granted Tenant and inflationary tendencies in recent years, Tenant agrees that in the event the "Consumer Price Index" published by the Bureau of Labor Statistics of the U.S. Department of Labor (1967 = 100) for New York/Northeastern New Jersey area for "All items" (hereinafter called the "Price Index"), or successor or substitute index appropriately adjusted, reflects an increase after the commencement date of this lease in the cost of living over and above such costs as reflected by such Price Index as it exists for the month of November 1980 (hereinafter called the "Base Month") the fixed rent payable hereunder shall be increased in accordance with the following:

(a) There shall be no adjustment until the month of December 1981. On the first day of December 1981 and each December 1st thereafter throughout the term, there shall be an adjustment in the amount of said fixed rent based on the difference between the Price Index as it exists on the Base Month and the Price Index for the calendar month of the date of such adjustment.

(b) The percentage increase thus determined shall be multiplied by the annual fixed rent payable hereunder and this sum shall represent the annual increase in such rent for the twelve (12) months next ensuing, commencing with such December adjustment month, provided that no such adjustment shall result in a decrease in the fixed rent below the fixed rent payable by Tenant under the terms of this lease. • • •

55. Maintenance: Tenant shall maintain the premises in a proper manner and in a general state of cleanliness. Tenant shall, at Tenant's sole cost and expense, arrange for the removal of and shall cause to be removed all refuse and rubbish from the demised premises in a manner which shall at all times comply with (a) such rules and regulations as, in the judgment of the Landlord, are necessary or desirable for the proper operation of the Building and (b) all applicable laws, orders, ordinances, rules and regulations of the Sanitation Department and Board of Health of New York City and of any other governmental authority having jurisdiction over the demised premises or the operations conducted therein.

56. No Representations: Tenant acknowledges that Tenant is fully familiar with the condition of the Building and the demised premises. Tenant therefore agrees to accept the demised premises "as is" and in whatever state or condition they may be in at the commencement of the term of this lease. Landlord shall not be obligated to do any work or make any repairs, alterations, or improvements in or to the demised premises, except as specifically set forth in this lease.

62. Tenant shall supply and install all fixtures by Tenant at Tenant's own cost and expense. Tenant also recognizes and agrees that the Tenant must obtain the written consent of the landlord for all alteration work to be done on the premises in advance for all such work being done. Tenant further recognizes and agrees that because this is a fireproof building, that all partition work must be done with metal studs and with 5/8" sheet rock on both sides. Tenant further recognizes, understands and covenants that the use of any wooden studs or partitions in the premises will be both a violation of the lease and a violation of the applicable building laws and codes and tenant covenants and agrees not to use any non-fireproof materials in any such construction work.

63. Tenant also recognizes and understands that all plumbing work must be done or approved by a licensed plumber and will submit all plumbing plan to the landlord for

landlord's prior written approval before such work is commenced.

64. Tenant recognizes, agrees and covenants that all waste and vent lines must be made or properly sized cast iron or galvanized iron pipe and that the use of plastic pipe is not legal in new York City. Tenant further reconizes and agrees that if copper tubing is used, said copper tubing must be rigid copper tubing and that the use of flexible copper tubing is not lawful or permitted and will also be a violation of the lease.

65. Tenant recognizes, agrees and covenants that all electrical work must be done and filed by a New York City licensed electrician. Tenant shall supply copies of all electrical installation drawings to the Landlord prior to such installation.

66. Tenant shall require all of its contractors plumbers and electricians to supply to the Landlord a certificate of insurance naming the Landlord as an additional insured prior to the commencement of any work by said contractor, plumber or electrician.

LOFT BOARD

Rules and Regulations

Pursuant to Section 1105 of the New York City Charter, Article 7-C of the Multiple Dwelling Law, and Mayor's Executive Order No. 66, the New York City Loft Board hereby promulgates the following Rules and Regulations Relating to Registration of Interim Multiple Dwellings and Minimum Housing Standards for Interim Multiple Dwellings.

Section 1 *Definitions*

A. *Landlord* -

As used in these regulations, the term "landlord" shall mean the owner of an interim multiple dwelling, the lessee of a whole building part of which is an interim multiple dwelling, or the agent or other person having control of such a dwelling.

B. *Residential Occupant* -

As used in these regulations, the term "residential occupant" shall mean an occupant of an interim multiple dwelling eligible for protection under Article 7-C of the New York State Multiple Dwelling Law.

Section 2 *Registration of Interim Multiple Dwellings*

A. The following "Information and Instruction to Owners, Lessees and Agents of Interim Multiple Dwellings" constitute the procedures for registration of Interim Multiple Dwellings pursuant to Section 284(2) of Article 7-C of the New York State Multiple Dwelling Law. Applications for registration shall be in a form promulgated by the Loft Board.

New York City Loft Board
116 Nassau Street
New York, NY 10038
566-1438

INFORMATION AND INSTRUCTIONS TO OWNERS, LESSEES AND AGENTS OF INTERIM MULTIPLE DWELLINGS

A new state law, Article 7-C of the Multiple Dwelling Law, effective June 21, 1982, required the establishment of a New York City Loft Board to foresee the legalization of residential lofts. The law defines as an "interim multiple dwelling" a building or a portion thereof in an area which allows residential use, which: (1) at any time was occupied for manufacturing, commercial or warehouse purposes; (2) on December first, nineteen hundred eighty-one was occupied for residential purposes since April first, nineteen hundred eighty as the residence or home of any three or more families living independently of one another; and (3) lacks a certificate of compliance or occupancy pursuant to section three hundred one of the Multiple Dwelling Law. In addition, in an interim multiple dwelling residential occupants in units first occupied after April 1, 1980 and prior to April 1, 1981 shall be qualified for protection pursuant to Article 7-C. A reduction in the number of occupied residential units in a building after December 1, 1981 shall not eliminate the protections of Article 7-C for any remaining residential occupants qualified for such protections.

Section 284(2) requires the registration of all interim multiple dwellings. These instructions are being sent to, or are available to, landlords of buildings which are believed to be interim multiple dwellings. (See 4. below.) If additional forms are required for other buildings, or if there are any questions, contact the above office.

INSTRUCTIONS - INTERIM MULTIPLE DWELLING REGISTRATION APPLICATION - PART A

1. PRINT, using black ink only, all information in completing the registration form. Detach this Information and Instruction sheet and RETURN copies of the form, when completed, to:

"I.M.D." REGISTRATION
NEW YORK CITY LOFT BOARD
116 NASSAU STREET
NEW YORK, NEW YORK 10038

Registration forms must be filed for all Interim Multiple Dwellings by January 31, 1983 to avoid payment of an initial registration fee.

* * *

8. *APPLICATIONS MUST BE COMPLETED IN ITS ENTIRETY. LEGIBLE COPIES OF THE CURRENT LEASE OR, WHERE THERE IS NO CURRENT LEASE, THE MOST RECENT LEASE AGREEMENT (INCLUDING ALL EXECUTED RIDERS, AMENDMENTS, MODIFICATIONS AND EXTENSIONS) FOR ALL RESIDENTIALLY OCCUPIED UNITS MUST BE ATTACHED REGARDLESS OF THE COMMERCIAL, RESIDENTIAL, OR MANUFACTURING NATURE OF THE LEASE. IF NO LEASE EXISTS OR EXISTED, ATTACH A SIGNED STATEMENT OUTLINING THE MOST RECENT RENTAL AGREEMENT.*

* * *

AN APPLICATION WILL NOT BE ACCEPTED, AND AN IMD REGISTRATION NUMBER WILL NOT BE ASSIGNED, UNLESS ALL QUESTIONS ARE ANSWERED IN FULL AND ALL REQUIRED LEASES ARE

ATTACHED. If a particular question or piece of information is inapplicable or not available enter NOT APPLICABLE and attach a signed statement explaining the reasons. The content of an application will be reviewed prior to acceptance.

* * *

If the owner, lessee, agent or other person is a corporation, other than a corporation listed as exempt from the provisions of the Multiple Dwelling Law § 325, the names, business and residence addresses and phone numbers of its officers must be listed on the form.

Other officers, including treasurer or chief fiscal officer, and stockholders who own or control at least 10% of the corporation's stock must be listed on a separate attachment.

If the owner, lessee, agent or other person is other than an individual or a corporation, the names, business and residential addresses and phone numbers for each general partner or participant in a partnership or joint venture must be listed on a separate attachment.

AT LEAST ONE OF THE PHONE NUMBERS ENTERED ON THE FORM MUST BE A CONFIDENTIAL TELEPHONE NUMBER WHERE A RESPONSIBLE PARTY CAN REASONABLY BE EXPECTED TO BE REACHED AT ALL TIMES FOR EMERGENCIES. SUCH NUMBER(S) MUST BE WITHIN 50 MILES RADIUS OF NEW YORK CITY LIMITS AND MUST BE INDICATED ON A SEPARATE SIGNED SHEET OF PAPER AND ATTACHED TO THE APPLICATION.

11. All owners, lessees of whole buildings, and agents or other persons having control of the premises who file for I.M.D. Registration Numbers agree to provide the minimum housing maintenance standards established or to be

established by the Loft Board to all residentially occupied units for as long as the I.M.D. Registration Number is valid.

* * *

B. Landlords of interim multiple dwellings for which an IMD Registration Number has been issued, shall be deemed to be compliance with the registration provisions of Article 7-C and shall be entitled to claim rents becoming due after the date of issuance of the IMD Registration Number, in summary proceedings, pursuant to Section 285(1) of Article 7-C of the Multiple Dwelling Law.

Finding that there are a significant number of ongoing disputes between landlords and residential occupants in loft dwellings over payment of past due rents and that Article 7-C did not intend to authorize landlords to recover past due rents from residents occupying premises which may not qualify for coverage under Article 7-C, the Loft Board believes that landlords' right to recover for past due rents pursuant to Section 285(1) of the Multiple Dwelling Law should be stayed until the question of coverage of an IMD has been resolved.

Landlords who waive their right to contest coverage by executing a written waiver in a form acceptable to the Loft Board or whose coverage dispute has been resolved by a determination that the premises in question are covered by Article 7-C and who have met the requirements of subdivision 2(A) of this rule shall be deemed in full compliance with the registration provisions of Article 7-C in order to claim past due rent payable from residential occupants pursuant to Section 285(1) of the Multiple Dwelling Law.

* * *

Section 284(2) of Article 7-C requires owners, lessees of whole buildings and agents of interim multiple dwellings (i.e. applicable non-residential loft buildings) to file with the Loft

Board a notice in conformity with Section 325 of the Multiple Dwelling Law and with rules and regulations promulgated by the Loft Board. This Rule, which established filing procedures conforms to MDL Section 325 while making additions in several important respects.

* * *

Second, owners, lessees and agents are required to submit the current, or most recent lease for each residentially occupied units along with IMD Registration Applications. All identifying information on these leases will be kept confidential. Third, those who file for IMD registration will agree to provide the minimum housing maintenance standards established by the Loft Board to all residentially occupied units.

Article 7-C, Section 282 authorizes the Loft Board to establish, after public hearings, minimum housing maintenance standards in interim multiple dwellings. The Loft Board held public hearings concerning minimum housing maintenance standards on October 27, 1982 and November 10, 1982. Landlords, tenants and concerned citizens testified.

I do hereby certify that good cause exists for waiving the requirement that thirty days shall first elapse after publication in THE CITY RECORD and that the foregoing Regulations shall become effective on the date of publication.

Dated: January 27, 1983
Filed with the City Clerk: January 27, 1983

/s/
CARL B. WEISBROD
Chairman

APPENDIX W

VILLAGE VOICE
February 13, 1996
P. 99

LOFTS FOR RENT 6180

Noho Bdwy-Studio for Sale:
Fixture Fee. Lifetime lse $640./mo
950sqft finished. Darkrm, live/work.
$35k cash/a deal!
(212)873-1581

LOFT BOARD

Notice of Promulgation of and Opportunity to Comment on New Rules Relating to Registration Of Interim Multiple Dwellings and Minimum Housing Maintenance Standards for Interim Multiple Dwellings Addressing Conditions Dangerous to Human Life and Safety

Pursuant to Section 1105 of the New York City Charter and by virtue of the authority vested in me as Chairman of the New York City Loft Board by Mayor's Executive Order No. 66 the following Rules Relating to Registration of Interim Multiple Dwellings and Minimum Housing Maintenance Standards for Interim Multiple Dwellings Addressing Conditions Dangerous to Human Life and Safety are hereby promulgated to be immediately effective.

NOTICE IS HEREBY GIVEN,
PURSUANT TO SUBDIVISION E OF
SECTION 1105 OF THE CITY CHARTER, THAT interested persons may comment in writing on the following Rules, which are effective immediately. Written comment regarding the Rules may be submitted to the undersigned, addressed to him at his office at 116 Nassau Street, New York, NY 10038 not later than January 5, 1983. Comments will be duly considered prior to the promulgation of permanent regulations on this matter.

Section 1 *Definitions*

A. *Landlord* - As used in these emergency regulations, the term "landlord" shall mean the owner of an interim multiple dwelling, the lessee of a whole building part of

which is an interim multiple dwelling, or the agent or other person having control of such a dwelling.

B. *Residential Occupant* - As used in these emergency regulations, the term "residential occupant" shall mean an occupant of an interim multiple dwelling qualified for protection under Article 7-C of the New York State Multiple Dwelling Law.

Section 2 *Registration of Interim Multiple Dwellings*

A. The following "Information and Instruction to Owners, Lessees and Agents of Presumptive Interim Multiple Dwellings" and "Interim Multiple Dwelling Registration Application - Part "A" constitute the procedures for registration of Interim Multiple Dwellings pursuant to Section 284(2) of Article 7-C of the New York State Multiple Dwelling Law:
(See separate Form and Instructions)

* * *

Section 3 *Minimum Housing Maintenance Standards For Interim Multiple Dwellings*

A. Landlords of interim multiple dwellings shall provide the following minimum housing maintenance services to residential occupants qualified for the protection of Article 7-C of the Multiple Dwelling Law:

1. *Water Supply and Drainage* - . . .

2. *Heat* - . . .

* * *

E. It is the objective of the Loft Board that residential occupants receive heat seven days a week. The Board will

mandate such services, through additional and expanded rules and regulations, as buildings move toward legalization.

3. *Hot Water* - . . .

4. *Electricity* - . . .

5. *Gas* - . . .

6. *Smoke Detectors* - . . .

7. *Public Lighting* - . . .

8. *Entrance Door Security* - . . .

9. *Elevator Service* - . . .

* * *

EXPLANATION

In June 1982 a new Article 7-C of the Multiple Dwelling Law was enacted. Article 7-C provides a framework whereby most of the City's living lofts will be brought up to minimum health and safety standards as well as brought under a system of rent regulation and minimum housing maintenance standards. Article 7-C required the Mayor to appoint a Loft Board to oversee this process. The Mayor established the Loft Board, pursuant to Executive Order No. 66, on September 30, 1982. Section 284(2) of Article 7-C requires owners, lessees of whole buildings and agents of interim multiple (i.e. applicable non-residential loft buildings) to file with the Loft Board a notice in conformity with Section 325 of the Multiple Dwelling Law and with rules and regulations promulgated by the Loft Board. This Rule, which establishes an emergency filing procedure and application, conforms to MDL Section 325 while making additions in several important respects. It permits owners, lessees and agents to file with the Loft Board without

waiving their rights to contest coverage before the Loft Board. Those wishing to contest coverage, however, must do so by letter within 30 days of the issuance of the IMD registration number and so inform their occupants. Second, owners, lessees and agents are required to submit the current, or more recent lease for each residentially occupied unit along with IMD Registration Applications. All identifying information on these leases will be kept confidential. Third, those who file for IMD registration will agree to provide the minimum housing maintenance standards established by the Loft Board to all residentially occupied units.

Article 7-C, Section 282 authorizes the Loft Board to establish, after public hearings, minimum housing maintenance standards in interim multiple dwellings. The Loft Board held public hearings concerning minimum housing maintenance standards on October 27, 1982 and November 10, 1982. Landlords, tenants and concerned citizens testified. The failure to provide and maintain the standards regarding water, utilities, hot water, heat and other services required pursuant to this Rule constitute a condition dangerous to human life and safety.

A procedure for landlords or interim multiple dwellings to file with the Loft Board is necessary so that the Board, and other City agencies, may determine which buildings are subject to Article 7-C of the Multiple Dwelling Law and which residential occupants are subject to the protections of said Article 7-C including the housing maintenance standards required by this Rule.

8. This application must be completed in its entirety. Legible copies of the current lease or, where there is no current lease, the most recent lease agreement (including all executed riders, amendments, modifications and extensions) for all residentially occupied units must be attached regardless of the commercial, residential, or manufacturing nature of the lease. All personal and confidential information on leases will not be available under the Freedom of Information Act. The application will not be accepted, and a registration number will NOT be assigned, unless ALL questions are answered in full and all required leases are attached. If a particular question or piece of information is inapplicable, enter NOT APPLICABLE. The contest of the application will be reviewed prior to acceptance.

* * *

11. All owners, lessees of whole buildings, and agents or other persons having control of the premises who file for I.M.D. Registration Numbers agree to provide the minimum housing maintenance standards established or to be established by the Loft Board to all residentially occupied units for as long as the I.M.D. Registration Number is valid, provided however, that an I.M.D. Registration Number shall not be deemed invalid solely if a residential occupant shall withhold the payment of any rent then due.

* * *

13. An identification sign containing the building, address, the interim dwelling registration number assigned by the Loft Board for the purpose of identifying the building and the owner and managing agent shall be posted in every interim multiple dwelling within five (5) business days after the issuance of the I.M.D. Registration Number. The manner and location of the sign must comply with rules prescribed by the

Article 7-C, Section 282 authorizes the Loft Board to establish, after public hearings, minimum housing maintenance standards in interim multiple dwellings. The Loft Board held public hearings concerning minimum housing maintenance standards on October 27, 1982 and November 10, 1982. Landlords, tenants and concerned citizens testified. The failure to provide and maintain the standards regarding water, utilities, hot water, heat and other services required pursuant to this Rule constitute a condition dangerous to human life and safety.

A procedure for landlords or interim multiple dwellings to file with the Loft Board is necessary so that the Board, and other City agencies, may determine which buildings are subject to Article 7-C of the Multiple Dwelling Law and which residential occupants are subject to the protections of said Article 7-C including the housing maintenance standards required by this Rule.

FINDING AND STATEMENT

As Chairman of the New York City Loft Board, I find that the imminent peril to the public health and safety caused by the existence of unsafe conditions in interim multiple dwellings and the absence of a filing system permitting the efficient identification of such interim multiple dwellings, requires adoption of the foregoing Rule and that the observance of the requirement of notice and opportunity for comment in writing would be contrary to the public interest. The foregoing Rule is therefore adopted to become effective on the date of publication in the City Record.

Dated: November 20, 1982
Filed with the City Clerk: November 30, 1982

/s/
CARL B. WEISBROD
Chairman

APPENDIX Y

EXCERPTS FROM LOFT BOARD LETTER

ANDREW E. SCHULTZ
CHAIRMAN

LEE FAMKES
DIRECTOR

RUDOLPH RINALDI
COMMISSIONER
DEPARTMENT OF BUILDINGS
EX OFFICIIO)

New York City Loft Board
Municipal Building - 23rd Floor South
One Centre St- Room 2358
New York, New York 10007
(212) 669-4375

Chuck Delaney
Samuel A. Jacobs
Cynthia Navaretta
Gerard Proefriedt
Elizabeth R. Wilde
Members

December 29, 1993

Dear IMD Owner or Representative:

There are a number of developments to communicate to you as we conclude another year and approach a new administration.

New Rules: The Loft Board has promulgated a series of new rules, effective December 6, 1993, involving non-institutional loans, Rent Guidelines Board (RGB) rent increases, and time limitations on coverage, rent overcharge and registration applications.

x x x

Proposed Rules: The Loft Board is also considering a package of revisions in its Code Compliance Regulations. The aim is to review these rules in light of our experience to date and to correct any areas which we find have not worked well in practice. Since this set of rules is being utilized by an increasing volume of buildings, we want to be sure they have been carefully reviewed and refined. Our particular goal is to make changes where where existing rules have contributed to delays and recourse to the administrative hearings process. The issues of elevators, rent adjustment exclusions based on deferred maintenance and preexisting violations, and the narrative statement and rent adjustment applications processes have been the initial priorities. We expect to have a final package developed in the next few months with a hearing by Spring.

x x x

Extensions: There has been an extraordinary volume of requests for extension of the October 1, 1993 building permit deadline.

While it is encouraging that many more owners than before are actively responding to our mailings and engaging themselves in the legalization process, the heavy volume

has also presented administrative burdens, since this new category of applications has been devised at a time of diminishing staff resources. For those owners who may still need further extensions, there are several steps which can be taken to ease processing time for the next round. First, the owner and architect should decide who is making the application, rather than each making a separate application. The person with the most direct knowledge should make the application. In the first round of extension requests, any building with duplicate filings was handled after buildings with one filing, and the same approach will be taken in the next round. Second, if the tenants support the extension application, the applicant should have them so advise us. Contested applications will be reviewed after uncontested ones, and the 25 day response time must be permitted to run, if there is no expression of tenant support or prior opportunity to comment.

X V X

Total IMD's to be legalized:
December 1992 - 784
December 1993 - 810

Buildings with C's of O:
December 1992 - 195 (25%)
December 1993 - 215 (27%)

Buildings with Permits or
Loft Board Certification:
December 1992 - 209 (27%)
December 1993 - 263 (32%)

Buildings with Narrative
Statements Filed:
December 1992 - 191 (24%)
December 1993 - 200 (25%)

Buildings with an Alteration
Application Filed:
December 1992 - 122 (16%)
December 1993 - 103 (13%)

Building w/o an Alteration

Application Filed:
December 1992 - 68 (9%)
December 1993 - 31 (4%)

Registration: There has also been an increased level of registration compliance. Whereas last year, there were 29 buildings unregistered and 167 whose registration was not current, this year with a larger IMD universe there are 21 unregistered and 145 not currently registered. For owners who are unable to complete registration due to outstanding fines, we have been able in many cases to work out time payment agreements which spread repayment over the registration period. Contact our registration unit for details. Another round of enforcement proceedings, seeking additional fines for non-registration or non-current registration, will begin after the first of the year.

Budget Reduction, Staff Shortages: The Loft Board lost another two positions and $50,000 in personnel funding, effective July 1, 1993, in the latest round of fiscal cut-backs. Particularly hard hit has been the hearings staff, which has now been reduced from five full-time and one per-diem hearing officers to a total of three, one of whom must also supervise the unit. While we will all continue to do our best to respond to pending applications, you should understand that there is a significant backlog and that our resources for responding have continued to diminish.

I hope this update has been helpful. Our best wishes for the holiday season and the new year ahead.

Yours truly,

Lee Fawkes

I hope this update has been helpful. Our best wishes for the holiday season and the new year ahead.

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October 21, 1986, Tuesday, Late City Final Edition

SECTION: Section B; Page 1, Column 3; Metropolitan Desk

LENGTH: 1013 words

HEADLINE: SUITABLE FOR FRAMING; CITY MAKES IT OFFICIAL: THEY'RE ARTISTS

BYLINE: By GEORGIA DULLEA

BODY:

FIFTEEN years after the Museum of Modern Art acquired its first work by Benny Andrews, and four years after the National Endowment for the Arts named him director of its visual arts program, an advisory committee to the city's Department of Cultural Affairs sat in a conference room the other night pondering whether he was a professional artist. They concluded he was. The 55-year-old painter was relieved. Last month the panel, the Artist's Certification Committee, had postponed action on Mr. Andrews's application for official status as an artist because of a technicality. "I forgot to sign my name," he said, rolling his eyes. "We artists don't always think about dotting 'i's' and crossing 't's.' "

Breaking New Ground

When Mr. Andrews and 29 other men and women joined the ranks of the city's 5,000 certified artists last week, they were not only following in the steps of Willem de

Kooning, Red Grooms and Alex Katz, but also breaking new ground in the 15-year-old certification program. Theirs were the first applications to be approved under formal, written regulations rather than an informal process that has mystified a generation of professionals in the creative arts.

The chief reason so many artists submit themselves to the process is that certification entitles them to legally live and work in commercial or industrial zones like SoHo where spaces are large and filled with light and rents are — or once were — low.

A Seal and a Signature

Other artists say certification — in the form of a notarized certificate, suitable for framing, bearing the silver seal of the Cultural Affairs Department and the signature of Commissioner Bess Myerson — looks good on grant applications. It is also said to impress the Internal Revenue Service.

"Primarily our applications come from New York," said the program's coordinator, Joseph Giordano, "but we get them from other parts of the country and the world — Spain, Israel, France, Canada, Italy, India. If they meet our criteria, we certify them."

As he spoke the telephone rang in his office at 2 Columbus Circle. The caller, a multimedia artist, told Mr. Giordano he would not divulge his Social Security number on his application. "Why does Bess Myerson want my Social Security number?" he asked.

Mr. Giordano, a painter before becoming a bureaucrat, decided not to press the matter. "With artists," he said, "you've got to be careful about issues of personal freedom."

A Mystery, Even to Applicants

The Artist's Certification Committee has long been something of a mystery body, even to artists. Created in 1971, the 18 artists, art educators and administrators from various disciplines meet 10 times a year. Of the 600 applicants whose credentials are considered each year, 75 percent are said to receive certificates.

Until recently, however, no written rules on certification existed and the procedure has long been the subject of lore. Chuck DeLaney, a photographer and a tenant representative on the Loft Board, says stories are still told in SoHo of nonartists who submitted their children's fingerpaintings and were certified within a week.

A couple of weeks ago, Mr. Giordano visited several real-estate agencies in SoHo, posing as a prospective loft buyer. He said that at each space he was shown, he asked the agent, "Don't you need some kind of artist's certificate to live here?" Invariably, he said, the reply was "Don't worry about it" or "Do you know any artists?"

Rent-An-Artist

The question was an allusion to the "rent-an-artist" scheme, he said, in which nonartists rent out small corners of lofts to people in berets.

One reason the formal regulations were drafted was to discourage nonartists from moving into artists' districts. "The city is concerned that our fine artists have places to live and work, and SoHo was set aside for that purpose," Ms. Myerson said.

According to a lawyer for the department, Susan B. Rothschild, the regulations basically codify past procedure. One change makes the certificate valid as long as the artist remains at the same address. In the past, artists had to be recertified every three years.

Documentation Needed

An artist is defined as one "engaged in the fine arts, not the commercial arts, including but not necessarily limited to painting, sculpture, choreography, filmaking and the composition of music, regularly and on a professional basis."

Extensive documentation is required. A visual artist must submit 15 to 20 slides or photographs of recent work, in addition to a resume, review clippings, show catalogues and references.

"What we do," said Robert Blakely, a painter on the committee, "is review their materials — slides, tapes, films, anything that proves they're out there in the real world functioning as a real artists. When we're really confused, rather than turn them down, we'll make a studio visit, which usually clears things up."

When the artist lives in SoHo or NoHo, the process is more complex. These areas are designated artists' joint living-working districts.

A 'Discerning' Committee

"By law," Mr. Blakely said, "we're bound to take the space needed into consideration. Theoretically, an artist like Joseph Cornell, who makes little boxes, wouldn't need the same space as Rivera, the Mexican muralist."

Ms. Myerson, who has observed the committee at work, describes them as "very intense and arduous."

"I've watched these people poring over credentials of artists to prove that they are fine artists, not commercial artists," she said. "They examine slides, signatures on paintings and in some instances they've discovered fraudulent representation. They're discerning." Doris Diether, a dance

critic and former committee member, recalled the case of an applicant who photographed paintings on display and submitted the slides as samples of his own work.

"Someone on the committee laughed and said, 'Oh, come on. That's So-and-So's work," she said. "The supposed artist was very indignant when we turned him down."

GRAPHIC: Photo of Benny Andrews and wife Nene Humphrey (NYT/Dith Pran)

SUBJECT: ART; ZONING

ORGANIZATION: CULTURAL AFFAIRS, NEW YORK CITY DEPARTMENT OF

NAME: GIORDANO, JOSEPH; DULLEA, GEORGIA; ANDREWS, BENNY

GEOGRAPHIC: NEW YORK CITY; SOHO (NYC)

APPENDIX AA

STATE OF NEW YORK

8958

IN SENATE

June 29, 1992

AN ACT to amend the multiple dwelling law, in relation to the legalization of interim multiple dwellings and to amend chapter 349 of the laws of 1982 amending the multiple dwelling law relating to the legalization of de facto multiple dwellings in cities of over one million, in relation to terminating such legalization.*

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 284 of the multiple dwelling law, as added by chapter 349 of the laws of 1982, is amended to read as follows:

1. (I) The owner of an interim multiple dwelling (A) shall file an alteration application within nine montsh from the effective date of the act which added this article, and B) shall take all reasonable and necessary action to obtain an approved alteration permit within twelve months from such effective date, and (C) shall achieve compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building within eighteen months from obtaining such alteration permit or eighteen months from such effective date, whichever is later, and (D) shall take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for the residential portions of the building or

---

* EXPLANATION - Matter in *italics* (underscored) is new; matter in brackets [ ] is old Law to be omitted.

structure within thirty-six months from such effective date. The loft board may, upon good cause shown, and upon proof of compliance with the standards of safety and fire protection set forth in article seven-B of this chapter, twice extend the time of compliance with the requirement to obtain a residential certificate of occupancy for periods not to exceed twelve months each.

(li) An owner of an interim multiple dwelling who has not complied with the requirements of paragraph (l) of this subdivision by the effective date of the chapter of the laws of nineteen hundred ninety-two which added this paragraph shall hereafter be deemed in compliance with this subdivision provided that such owner files an alteration application by October first, nineteen hundred ninety-two, takes all reasonable and necessary action to obtain an approved alteration permit by October first, nineteen hundred ninety-three, achieves compliance with the standards of safety and fire protection set forth in article seven-B of thischapter for the residential portions of the building by April first, nineteen hundred ninety-five, or within eighteen months from obtaining and approved alteration permit, whichever is later, and takes all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple swelling for the residential portions of the building or structure by June thirtieth, nineteen hundred ninety-five or within six months from achieving compliance with the aforementioned standards for the residential portions of the building, whichever is later.

(iii) An Owner who is unable to satisfy any requirement specified in paragraph (ii) of this subdivision for reasons beyond his/her control,including, but not limited to, a requirement to obtain a certificate of appropriateness for modification of a landmarked building, a need to obtain a variance from a board of standards and appeals, or the denials of reasonable access to a residential unit as required by paragraph (vii) of this subdivision, may apply to the loft board for an extension of time to meet the requirement specified in paragraph (ii) of this subdivision. The loft Board may grant an extension of time to meet a requirement specified in paragraph (ii) of this subdivision provided that

the owner demonstrates that he/she has made good faith efforts to satisfy the requirements.

(iv) If there is a finding by the loft board that an owner has failed to satisfy any requirement specified in (paragraph) paragraphs (I) and (ii) of this subdivision, such owner shall be subject to all penalties set forth in article eight of this chapter.

(iii) (v) In addition to the penalties provided in article eight of this chapter, if there is a finding by the loft board than an owner has failed to satisfy any requirement specified in (paragraph) paragraphs (i) and (ii) of this subdivision, a court may order specific performance to enforce the provisions of this article upon the application of three occupants of separate residential units qualified for the protection of this article, or upon the application of the minicipality.

[(iv)] (vi) If, as a consequence of an owner's unlawful failure to comply with the provisions of (paragraph) paragraphs (i) and (ii) of this subdivision, any residential occupant qualified for protection pursuant to this article is required to vacate his or her unit as a result of a muncipal vacate order, such occupant may recover from the owner the fair market value of any improvements made by such tenant [,] and reasonable moving costs. Any vacate order issued as to such unit by a local government shall be deemed an order to the owner to correct the non-compliant conditions, subject to the provisions of this article. Furthermore, when such correction has been made, such occupant shall have the right to re-occupy his or her unit[,] and shall be entitled to all applicable tenant protections of this article.

[(v)] (vii) The occupants of a building shall, upon appropriate notice regarding the timing and scope of the work required, afford the owner reasonable access to their units so that the work necessary for compliance with this article can be carried out. Access shall also be afforded, upon reasonable prior notice, for the purpose of inspecting and surveying units as may be required to comply with the provisions of this article and article seven-B of this chapter. Failure to comply with anorder of the loft board regarding access shall be grounds for eviction of a tenant.

SS 2. Subdivision 2 of section 286 of the multiple dwelling law, as added by chapter 349 of the laws of 1982, is

amended to read as follows: 2. (i) Prior to compliance with safety and fire protection standards of article seven-B of this chapter, residential occupants qualified for protection pursuant to this article shall be entitled to continued occupancy, provided that the unit is their primary residence, and shall pay the same rent, including escalations, specified in their lease or rental agreement to the extent to which such lease of rental agreement remains in effect or, in the absence of a lease or rental agreement, the same rent most recently paid and accepted by the owner, if there is no lease or other rental agreement in effect, rent adjustments prior to article seven-B compliance shall be in conformity with guidelines to be set by the loft board for such residential occupants within six months from the effective date of this article.

(ii) In addition to any rent adjustment pursuant to paragraph (i) of this subdivision, on or after the effective date of this paragraph, the rent for residential units in interim multiple dwellings that are not yet in compliance with the requirements of subdivision one of section two hundred eighty-four of this article shall be adjusted as follows:

(A) Upon the owners' filing of an alteration application, as required by paragraph (ii) of subdivision one of section two hundred eighty-four of this article, an adjustment equal to six percent of the base rent in effect at the time the owner files the alteration application.

(B) Upon obtaining an alteration permit, as required by paragraph (ii) of subdivision one of section two hundred eighty-four of this article, an adjustment equal to eight percent of the base rent in effect at the time the owner obtains the alteration permit.

(C) Upon achieving compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building, an adjustment equal to six percent of the base rent in effect at the time the owner achieves such complaince.

(D) Owners who filed an alteration application prior to the effective date of this subparagraph shall be entitled to a prospective adjustment equal to six percent of the base rent on the effective date of this subparagraph.

(E) Owners who obtained an alteration permit prior to the effective date of this subparagraph shall be entitled to a prospective adjustment equal to fourteen percent of the base rent on the effective date of this subparagraph.

(F) Owners who achieved compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building prior to the effective date of this subparagraph shall be entitled to a prospective adjustment equal to twenty percent of the base rent on the effective date of this subparagraph.

(iii) Any rent adjustments pursuant to paragraph (ii) of this subdivision shall not apply to units which were rented at market value after June twenty-first, nineteen hundred eighty-two and prior to the effective date of this paragraph.

(iv) Payment of any rent adjustments pursuant to paragraph (ii) of this subdivision shall commence the month immediately following the month in which the act entitling the owner to the adjustment occurred.

Sec. 3 Section 277 of the multiple dwelling law is amended by adding a new subdivision 16 to read as follows:

16. The requirements and standards prescribed in this section shall be subject to variation in specific cases by the commissioner of buildings, or the board of standards and appeals, of such city under and pursuant to the provisions of paragraph two of subdivision b of section six hundred forty-five and section six hundred sixty-six of the New York City charter.

Sec. 4. Section 3 of chapter 349 of the laws of 1982 amending the multiple dwelling law relating to the legalization of interim multiple dwellings, as amended by chapter 226 of the laws of 1992, is amended to read as follows:

Sec. 3. Effective date and termination. This act shall take effect immediately. The provisions of this act and all regulations, orders and requirements thereunder shall terminate [~~June 28, 1992, except in their applicability to buildings with six or more residential tenants as of the effective date in which case termination shall occur twelve years from the effective date~~] June 30, 1996.

Sec. 5. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after June 21, 1992.

APPENDIX BB

NUMBER XXXIX

THE FEDERALIST

THE CONFORMITY OF THE PLAN TO REPUBLICAN PRINCIPLES:

* * *

... Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express guaranty of the republican form to each of the latter . . .

* * *

PUBLIUS [Madison]

* * *

NUMBER XLIV

THE SAME VIEW CONTINUED AND CONCLUDED

... Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived if they have not, in so doing, as faithfully consulted the genuine

sentiments as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society. The prohibition with respect to titles of nobility is copied from the Articles of Confederation and needs no comment.

* * *

PUBLIUS [Madison]

* * *

NUMBER LXXXIV

CONCERNING SEVERAL MISCELLANEOUS OBJECTIONS

* * *

The establishment of the writ of *habeas corpus*, the prohibition of *ex post facto* laws, and of TITLES OF NOBILITY, *to which we have no corresponding prohibition in our Constitution*, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary

imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny. The observations of the judicious Blackstone, in reference to the latter, are well worthy of recital: "To bereave a man of life [says he] or by violence to confiscate his estate, . . . hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a *more dangerous engine* of arbitrary government."

* * *

... Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the cornerstone of republican government; for so long as they are excluded there can never be serious danger that the government will be any other than that of the people. ...

* * *

PUBLIUS [Hamilton]

NUMBER LXXXV

CONCLUSION

* * *

The additional securities to republican government, to liberty, and to property, to be derived from the adoption of the plan under consideration, consist chiefly in the restraints which

the preservation of the Union will impose on local factions and insurrections, and on the ambition of powerful individuals in single States who might acquire credit and influence enough from leaders and favorites to become the despots of the people; in the diminution of the opportunities to foreign intrigue, which the dissolution of the Confederacy would invite and facilitate; in the prevention of extensive military establishments, which could not fail to grow out of wars between the States in a disunited situation; in the express guaranty of a republican form of government to each; in the absolute and universal exclusion of titles of nobility; and in the precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit, have planted mutual distrust in the breasts of all classes of citizens, and have occasioned an almost universal prostration of morals.

* * *

PUBLIUS [Hamilton]

APPENDIX CC

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June 12, 1988, Sunday, Late City Final Edition

SECTION: Section 10; Page 11, Column 1; Real Estate Desk

LENGTH: 1424 Words

HEADLINE: IF YOU'RE THINKING OF LIVING IN:. SoHo

BYLINE: By MARK McCAIN

BODY:

THAT chic and gritty district of Manhattan known as SoHo should post a warning at its borders: Only rich artists need apply. For what was once a refuge for painters seeking cheap space to work on huge canvases has been bid up like the prices of Warhol knickknacks at a Sotheby's auction.

Along narrow, cobblestoned streets, loft buildings from a century ago — when Manhattan boasted manufacturing muscle — now house sculptors, painters and people simply willing to pay the price.

Technically, only city-certified artists can move into SoHo, except for a few buildings open to anyone. The theory is that artists need large, inexpensive spaces to create their work. But frenzied demand for Manhattan housing is pushing that theory beyond its limits.

On Wooster Street, a 7,500-square-foot loft has been transformed into a fantasyland of more than a dozen rooms

dressed up with architectural artifacts like marble fireplaces. It's for sale at $2.3 million.

There are cheaper lofts, of course, but below $500,000 the options are limited and modest. The raw loft space, decrepit and dirty, that attracted artists to SoHo a decade ago is rarely for sale today. When a building at 123 Greene Street became a residential co-op recently, the unrenovated 4,000-square-foot floors sold briskly for about $800,000 apiece.

"Ten, 15 years ago when artists first came here, a lot of them were young and living together," said Anthony Dapolito, who has been watching the neighborhood from his bakery on Prince Street for half a century. "Now they all have babies and they're just like everyone else. They're interested in day-care centers and schools. They want playgrounds."

But no one left room for playgrounds in SoHo, which is zoned for manufacturing. So its metamorphosis from factory grime to family comforts is incomplete.

And that appeals to many of the residents, who enjoy the eclectic, often volatile mix of artistic and commercial forces in this 33-block district, named SoHo because it extends south of Houston Street to Canal Street. Even to tourists who crowd the streets on weekends, the incongruity is hard to miss.

Within a few yards of Fanelli Cafe, a friendly beer-and-burger joint at Prince and Mercer Streets, there are a lumber yard, an art gallery, a machine shop, a fashion boutique, and a store with more photography books than nearly any competitor in North America.

Most of SoHo lies within a historic district created in 1971 to protect "the largest concentration of cast-iron facades *anywhere* in the world." Greene Street is especially rich in ornate columns, entwined serpents, pilasters and arches.

Even before the Italianate cast-iron architecture began emerging in the late 1860's, SoHo had a commercial appeal. Warehouses and stables lined the streets — having pushed out the modest clapboard houses of blacksmiths and other workers who moved in after farmers sold off their acreage in the late 1700's.

Although the formal lines of historic SoHo are rigid, its neighborhood spirit is fluid, spreading north and west, while Chinatown edges up from the southeast. Its free-spirited disdain of boundaries helps make SoHo a creative, chaotic place. It would rather assault senses than assuage them.

That rebellious spirit carries over into regulatory matters. Unreliable freight elevators converted illegally to passenger use are common. So are dozens of other building-code violations. Some co-ops lack certificates of occupancy, which New York City requires of all residential structures. For a buyer, that means a deal must be all cash because banks will not finance illegal residences.

Since 1971, when a zoning resolution was adopted to allow living-working quarters in SoHo, new residents have been required to be certified as artists by the Department of Cultural Affairs.

But many people who would be hard pressed to draw a stick figure have moved into SoHo without certification. So last fall, in an admission of past enforcement failures and a vow of future vigilance, the city offered amnesty to SoHo residents who broke the rules.

Since then, co-op boards and real estate brokers have been reluctant to sidestep certification. The city has yet to display a hard-line stance, but people fear the city will initiate eviction proceedings against new residents who flout it.

"Like manufacturers, artists use their space to create their work, so we feel we're justified in making a special exception for them," said Susan B. Rothschild, counsel to the Department of Cultural Affairs. "It's the artists who are largely responsible for the excitement and vitality of SoHo today."

Above half of the 4,000 residential lofts in SoHo are rental, but they are difficult to find on the market. And for the people who live within them, they often are difficult to hang onto only because of their murky legal status.

"It's not the typical nature of artists to become involved with lawyers, bureaucracy and paperwork — but we've become pros at it," said Marie Dormuth, an artist who moved into a loft on Canal Street 11 years ago. "Nearly every artist I know has very expensive legal counsel."

Part of their legal time is focused on 1985 regulations the city Loft Board adopted to force renovations in nearly 1,000 residential loft buildings with health, safety or fire code violations. First, debate raged over how renovation costs should be shared; now tenant activists fear that hundreds will be evicted from buildings where owners cannot, or will not, remove violations by the 1992 deadline.

"It's a real distraction from our work, but we have to fight because this housing stock is a rare resource that belongs to the artists," Ms. Dormuth declared. "We pioneered this neighborhood, and we're still a strong group, even though now we've surrounded by gilded French restaurants and boutiques."

IT is those restaurants and boutiques — along with the art galleries — that define SoHo for many visitors. From Dean & DeLuca, a cornucopia of fresh and exotic foods, to Chanterelle, the only downtown restaurant to earn four stars from The New York Times restaurant critic, good food is never far way in SoHo.

Nor is provocative art. In addition to the roster of famous galleries operated by the likes of Max Protech, Diane Brown and Leo Castelli, new galleries seemingly germinate overnight.

Throughout SoHo, a core of establishments have prospered for more than a decade — while a dizzying parade of others pass through, often nipped by rising rents, especially along the prime retail street, West Broadway.

"It's like West Broadway gets a personality makeover at least once a year," said David Matthews, a dancer who lives on Greene Street. "Right now it's all fancy boutiques and cafes, although some kitschy galleries and T-shirt shops have opened up to tap the tourist market."

Yet as a community created within an old manufacturing district, SoHo lags behind in basics like supermarkets, barbershops and variety stores. Schools, too, tend to be outside the neighborhood.

Parents in SoHo can choose among more than a dozen private and parochial schools elsewhere in downtown Manhattan, and three public elementary schools: P.S. 3 at 490 Hudson Street, P.S. 41 at 116 West 11th Street and P.S. 234 at 334 Greenwich Street. The High School for Humanities, about 20 blocks north at 351 West 18th Street, is a frequent choice for older students.

"Like every other community we have lots of little problems," said Mr. Dapolito, the 67-year-old baker, "but SoHo has survived the years well — and so have I. When everyone was eating Wonder Bread and TipTop I thought it was the end of the world for bakeries. But these artists, they go wild for my bread.

"I don't think we could have gotten a better class of people than the artists," he added. "They're intelligent, they're hard working and they're nonviolent."

GAZETTEER

Population: 8,400 (1980 census).

Median household income: $36,400 (1985 estimate)

Median 2,000-square-foot loft price: $535,000.

Median 2,000-square-foot loft rent: $3,250.

Rush-hour commutation to midtown: 15 minutes on the IRT, BMT or IND line, 20 minutes by bus on the major avenues.

Councilwoman: Miriam Friedlander, Democrat.

Blazing Barrels: In the 1800's firefighters called SoHo "Hell's Hundred Acres" because of fires that broke out repeatedly in warehouses overcrowded with cloth, chemicals and other flammables — spurring owners to began erecting brick and cast-iron warehouses around 1870.

GRAPHIC: Photos of Chanterelle restaurant at 89 Grand Street; interior of Dean & DeLuca, exotic food store at 121 Prince Street (NYT/Peter Freed); map of SoHo (NYT)

SUBJECT: SOCIAL CONDITIONS AND TRENDS; GEOGRAPHIC PROFILES

NAME: MCCAIN, MARK

GEOGRAPHIC: NEW YORK CITY; SOHO AREA (SOUTH HOUSTON INDUSTRIAL DISTRICT) (NYC)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

640 BROADWAY RENAISSANCE COMPANY,	:	
	:	AFFIDAVIT IN
Plaintiff,	:	SUPPORT OF
	:	PLAINTIFF'S
- against -	:	MOTION FOR
	:	SUMMARY
MARIO CUOMO, as Governor of The State of New York, *et al.*,	:	JUDGMENT
	:	
Defendant.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARTIN R. FINE, being duly sworn, deposes and says:

* * *

13. It is also an undeniable fact that 640 Broadway is not structurally suited as a multiple dwelling. In order to make the building suitable for residential use, major structural changes would be required, including the installation of fireproof walls, stairways and fire escapes, as well as the installation of new elevators and substantially new plumbing, heating and electrical systems. In addition, the Owner would have to comply with a myriad of City and State laws which only apply to the operation of residential buildings, but not to commercial buildings.

manufacturing enterprises. While there had been illegal residential use prior to plaintiff's purchase, in fact, the plaintiff eliminated such use by removing all the residential tenants after the plaintiff took title.[2]

* * *

18. In each instance, the lease was the product of an arms-length transaction with a well-educated, sophisticated adult who either was represented by, or had access to an attorney. In each instance, the premises were vacant, the occupant who executed the lease had a residence elsewhere and expressly represented to the Owner that the unit would not be used as a residence. The occupants further represented that they knew it was illegal to reside in the building; that they would comply with all laws relating to the use of the premises; and that they would indemnify the Owner and hold it harmless from any claims, penalties, loss, damage or expense, including attorneys fees, incurred because of their illegal use of the premises.

19. The plaintiff had good reason to insist upon each occupant's specific promise that the unit would not be used as a residence. It is a well-known fact that in the late 1970's it became quite chic to live in commercial loft buildings in lower Manhattan. It was to protect the plaintiff from those adventurous individuals who were willing to flaunt the building code and applicable zoning laws, that *this building owner* insisted upon specific written assurances from all prospective tenants that they would use their units solely for commercial purposes, and would indemnify the plaintiff against all damages resulting from any illegal use. Moreover, their leases specifically required the tenants to pay for the cost of any subsequently required building improvement or changes.

20. Had the prospective tenants not made those specific written representations, the plaintiff never would have entered into any lease agreements with them.

* * *

25. Furthermore, it is abundantly clear from all of the other lease provisions that the premises were rented exclusively for commercial purposes. The following provisions establish the intention of the parties to enter a commercial, and not a residential landlord/tenant relationship:

a. Paragraph 30 of the lease requires the landlord to provide heat and elevator service only on business days from 8 a.m. until 6 p.m. and on Saturdays from 8 a.m. until 1 p.m. The landlord is not required to furnish these services in the evenings, on Saturday afternoons, or on Sundays.

b. Also pursuant to Paragraph 30, the *tenant* is obligated "to pay Landlord the cost of removal of any of tenant's refuse and rubbish from the building; and pursuant to Paragraph 4, the *tenant* is obligated to arrange and pay for the extermination of vermin.

c. Pursuant to Paragraph 41, the *tenant* is obligated to "replace all damaged or broken plate glass or other glass in or about the demised premises."

d. Pursuant to Paragraph 42, the *tenant* at its sole cost and expense shall be solely responsible for and pay for all utilities and/or services used and required by tenant, including electricity and gas and water."

e. Pursuant to Paragraph 39, the *tenant* is obligated to "obtain and maintain at Tenants' sole cost and expense all licenses and permits from any and all governmental authorities having jurisdiction of the demised premises which may be necessary for the conduct of Tenant's business therein."

f. Pursuant to Paragraph 78, the *tenant* is obligated to maintain a $500,000.00 liability insurance policy in effect for the benefit of the landlord and the tenant.

g. Pursuant to Paragraph 54, the landlord is entitled to periodic rent increases based on the Consumer Price Index.

h. Pursuant to Paragraph 72, *the tenants agreed to accept the demised premises "as is" in its condition at the commencement of the lease term.*

* * *

26. The foregoing provisions are found only in commercial leases. Clearly, these were not residential leases. The plaintiff never agreed to provide those services which are required for residential tenants. In determining the rent, which was freely negotiated, the plaintiff did not factor in the cost of providing residential services, because the leases were commercial, not residential in nature, and because the building was zoned for manufacturing and office use only. Neither did the rents reflect the enormous costs that would be involved in converting the building into a legal multiple dwelling, even if that were legally and structurally possible.

31. Moreover, my attorneys advise me that these deliberate violations by the occupants constitute a criminal offense under Section 304(1) of the New York State Multiple Dwelling Law, which provides that every person who violates or assists in the violation of the multiple dwelling law shall be guilty of a misdemeanor punishable by fines and/or imprisonment. *N.Y. Mult. Dwell. Law* §304(1) (McKinney 1986).

* * *

33. Besides their illegal residential use, the occupants have violated their leases by their deliberate failure to quit and surrender the premises upon the expiration of their lease terms.

34. All of the leases at issue here were first executed in the period between 1978 and 1982. Each was a standard commercial loft lease which provided for a short term of between two to six years. All of these leases, except one, have expired.[3] Annexed hereto as Exhibit F is a list of the occupants and the execution and expiration dates of their leases.

* * *

Moreover all of the occupants assert the right to reside on the premises indefinitely under the protection of the Loft Law, which, they claim, permits them to live in their units rent free.

36. The occupants have violated their leases in other ways. Primary among these violations is the persistent failure on the part of the occupants to pay rent, rent increases, and/or use and occupancy for their units.

37. Since the determination of the Loft Board, none of the occupants have paid rent. Furthermore, many occupants, in reliance upon the provisions of the Loft Law, stopped paying rent after its enactment. For instance, Hannah Eshel has not paid rent since October of 1984 and owes an amount in excess of $70,000.00. Other occupants owe amounts ranging from $10,500.00 to $36,000.00. At the present time, the Owner is owed rent, additional rent and/or use and occupancy in the amount of at least $465,017.94 (calculated at the rates called for in the expired leases). Annexed hereto as Exhibit G is a list of the rent arrears for each unit as well as their current market values.

* * *

THE OWNER'S ATTEMPTS TO IMPROVE CONDITIONS AT 640 BROADWAY

• • •

43. Extensive renovations and repairs were made to upgrade the building and to cure the building and fire code violations that the previous tenants had caused. For instance, a new boiler was installed in 1988 at a cost of approximately $45,000.00, which is more than adequate to meet the needs of a commercial loft building operated in a manner consistent with the requirements of the leases. In addition to general renovations in the public areas, a new front door, mail boxes, an intercom security system were installed at the Owner's expense, although not required by the leases.

• • •

47. In 1982 after the passage of the Loft Law, the Owner abandoned its attempt to alter the permissible use of the building because of the statute's oppressive and confiscatory provisions. Thus when the plaintiff made a good faith effort to legally convert the building to residential use, the City would not allow it; and now that the plaintiff vehemently objects, the State and City, under the pain of non-collection of rent, and the imposition of crushing penalties, seek to force the Owner to apply for a discretionary zoning change and totally change the existing certificate of occupancy and force the unwanted conversion of 640 Broadway into a multiple dwelling. This is in direct violation of the leases, the existing certificate of occupancy and the zoning laws.

• • •

51. Among other provisions, the Loft Law established an administrative body called the Loft Board (MDL §282). The Loft Board consists of from four to nine members who purportedly represent the public, the real estate industry, loft residential tenants, and loft manufacturing interests, but in fact are all political appointees of the Mayor of the City of New York and serve at his whim and pleasure.[4]

52. Among other duties, the Loft Board is charged with the responsibility of determining which buildings are covered by the Loft Law. The Loft Board also issues regulations, *which currently exceed several hundred pages*, and further totally negate the basic rights of property owners like the plaintiff.

* * *

55. The economic impact of this scheme on an owner such as the plaintiff is devastating. Not only must an owner bear all of the economic risk throughout a conversion process which could take several years, but it is certain that the owner will not recoup any expenses for an extended period of time, and will *never* recoup *all* of the conversion costs. These statutory provisions are in direct conflict with the leases for 640 Broadway which obligate the tenants to pay for the cost of all "non-structural repairs" and all other legally required building alterations (Exhibit E, Pars. 4, 6, 39, 55, 69).

* * *

58. As originally enacted, the Loft Law contained a mechanism for exemptions from coverage for those buildings for which compliance would cause an "unjustifiable hardship" (MDL §285(2)). Hardship exemptions were purportedly available in cases where the cost of compliance rendered the residential conversion infeasible. However, those hardship

provisions (which were both speculative and illusory) *lapsed* prior to the finding by the Loft Board that 640 Broadway was covered by the Loft Law (MDL §285[2]).

59. Thus, even though the residential conversion of this building will cause the plaintiff devastating economic hardship, there exists no statutory basis for avoiding compliance with the Loft Law. Moreover, it is a matter of public record that no hardship exemption has ever been granted.

* * *

63. Apparently the legislature determined that because artists supposedly require large amounts of space for their work, and because the financial remunerations of artists are supposedly "small," the conversion of former manufacturing and commercial loft buildings should be *encouraged* to provide housing for artists. However, in conjunction with Article 7-C (the Loft Law) these statutes do more than merely encourage housing for artists, they mandate the conscription and the forced conversion of certain targeted buildings for that purpose without paying the Owner for the property rights that have clearly been seized.

* * *

65. The end result of this statutory scheme is that the owners of these arbitrarily selected commercial loft buildings are being compelled to subsidize artists in the pursuit of their alleged artistic endeavors by the State of New York which has gratuitously turned over virtually all of the Owner's basic property rights to the illegal residential tenants. Incredibly, the whole legislative scheme is premised upon the deliberate criminal acts of these tenants.

* * *

67. In essence, this amounts to a "reward" to the tenants for their deliberate illegal occupation of the premises in knowing violation of the leases, the certificate of occupancy, the building code and the zoning laws. This "reward" consists of the grant of virtual life estates in the premises to the occupants, and a forcible and massive turnover of the Owner's property rights to former tenants without just compensation.

• • •

80. The total effect of the Loft Law is to confiscate the building from the plaintiff and to give essential long-term control of the property to the occupants, thereby rewarding them for their deliberate violations of the law and their leases.

81. Pursuant to the Loft Law, the fact that illegal residential use violates the law and the leases cannot serve as a basis for removing the illegal-use tenants, nor can the fact that the leases long ago expired (MDL §286). These restrictions demonstrate the coercive heart of the statute and its confiscatory nature.

82. Under the Loft Law, there is one and only one way that affected owners can recover any rent or the value of the use and occupancy of the units in the building. According to the Loft Law, only affected owners who are "in compliance" with the statute can recover rent. In order to be in compliance with the Loft Law, an affected owner must capitulate to the confiscatory provisions of that law. The owner must register with the Loft Board and must comply with a schedule, the end of which is the forced conversion of the building to a legal multiple dwelling at huge and uncompensated expense. And before any of the work can even begin, the plaintiff must apply for and be granted a discretionary zoning change known as a "special permit," which may never be granted, which may take years to obtain, and which is subject to the discretionary review by the Community Planning Board, the City Planning

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84. By permitting the occupants to remain in long-term residential rent-free occupancy, the State has authorized the virtual seizure by the occupants of the Owner's building, and the State has affirmatively granted the former tenants legal estates in the property. The Owner never authorized, and in fact expressly prohibited residential use; the State authorized that. It was not the Owner who authorized the former tenants to remain in occupancy after the expiration of their leases; the State did that. The Owner never authorized indefinite lease renewals; the State did that. The Owner never authorized the occupants to live in the building rent free; the State did that.

* * *

86. The right to collect rent on leased property is the most fundamental right of property ownership, without which the entire American system of real estate ownership and financing would collapse.

* * *

92. Thus, the Loft Law requires the Owner to permit the permanent physical occupation of its building by third parties arbitrarily selected by the State and who now exercise their complete dominion over the property, and the Owner has no control over the timing, extent or nature of the invasion or its cost.

93. In deciding this motion, I respectfully urge this court to consider the fact that the only commodity that a property owner like the plaintiff has to sell is the use and occupancy of the space within its building. It is the plaintiff's only stock in trade. To deprive the Owner of the monetary value of the property, and all of its rights to use, possess or rent the property is to extinguish virtually all rights of ownership.

THE LOFT LAW AND RELATED STATUTES IMPOSE AN UNFAIR BURDEN ON THE OWNER TO SUBSIDIZE ARTISTS

* * *

100. Here, the subsidy takes two forms. First, the Owner is required to rehabilitate this almost 100 year-old commercial structure at a cost of nearly Two Million Dollars in order to make it suitable for residential use. Moreover, because only certain costs can be passed on to the occupants, and even though these costs must be amortized over a ten or fifteen year period, full recoupment is unlikely. The second form of subsidy occurs because the Owner is compelled to totally renovate its existing commercial building to provide living quarters for artists indefinitely and at reduced and strictly controlled rents under the Emergency Tenant Protection Act of 1974.

* * *

103. While subsidized housing for "artists", like housing for the elderly or the homeless, may be commendable government programs, it is simply unfair and unconstitutional to impose the entire economic cost of remedying such social problems on a small group of arbitrarily selected owners like the plaintiff.

THE STATUTORY SCHEME IS NOT RATIONALLY RELATED TO ITS STATED PURPOSE

104. My attorneys advise me that in order for a statute which treats citizens unequally to pass constitutional muster, it must be rationally related to a legitimate state purpose.

105. Articles 7-B and 7-C, in conjunction with the Zoning Resolution, are not rationally related to the stated

purpose of providing low-income artist with inexpensive housing and work space. Most of the persons protected by these laws are not artists, nor are they in a low-income bracket, and of those who are artists, many do not require large living/work quarters for the pursuit of their artistic endeavors.

106. Annexed hereto as Exhibit L is a recent article from the *New York Times* which noted that the median 2,000 square-foot loft price in SoHo is $535,000.00; the median 2,000 square-foot rent is $3,250.00; and the median household income is $36,400.00. *N.Y. Times*, June 12, 1988, §10, p. 11, col. 1. While the neighborhood in which 640 Broadway is located may have been pioneered by artists seeking inexpensive work space, it is now populated by chic and expensive boutiques, galleries and restaurants. Technically, only certified artists are entitled to loft spaces, but as a practical matter as the *New York Times* warned, "[o]nly rich artists need apply." *Id.*

• • •

109. The Owner of 640 Broadway has relied in good faith on the existing zoning regulations which prohibit the residential use of this building, as well as the lawfully issued certificate of occupancy for commercial use, which dates back to 1966. This certificate of occupancy cannot be recalled, cancelled or vacated at the whim of the government.

110. The government should not be permitted to compel the plaintiff to apply for a change in the existing zoning or certificate of occupancy for this building. The plaintiff has a vested property right in the existing certificate of occupancy issued to the building and the zoning classification which permit the building to be used only for commercial and office purposes. Not only is this the only lawful use, but it is the only

use that the plaintiff desires, and the only use permitted in the occupants' leases.

111. In addition to depriving the Owner of the right to decide the lawful use to which its building will be put, the Loft Law also deprives the Owner of the right to decide how it will invest its money, and forces the Owner into a new business — residential housing — at enormous and uncompensated expense. In order to bring the building into full compliance with the applicable multiple dwelling laws, the Owner will have to spend upwards of Two Million Dollars to attempt to obtain a type of zoning variance called a "special permit" it does not want; to make major structural alterations and improvement which it does not desire or need; so that the building can be

• • •

116. Thus, the Loft Law has substantially altered the contractual relationship between the defendant-occupants and the Owner, and has superimposed additional obligations conspicuously beyond what the Owner agreed to undertake.

117. My attorneys advise me that this constitutes an unconstitutional impairment of the obligations of a private contrary in violation of Article I, §10 of the United States Constitution.

118. The determination of whether a building is covered by the Loft Law depends in part upon whether a residential certificate of occupancy had been issued to that building prior to the effective date of the statute (MDL §281(1)). Thus, the legislature created two classes of loft buildings, and imposed different obligations on the owners in these separate classes. It is only the owners of the applicable buildings who had not obtained residential certificates of occupancy by June 21, 1982 the date of the enactment of the Loft Law, who are compelled by the Loft Law to convert their buildings to residential use and who are thereafter subjected to rent control.

120. In fact, the imposition of rent control is counter-productive, because rather than provide an incentive to owners to undertake these massive rehabilitation projects, the law makes it virtually impossible for the affected owners to obtain financing for or recoup their forced investments. Clearly, by cavalierly subjecting these buildings to commercial rent control, the Loft Law goes far beyond its stated purpose.

121. My attorneys advised me that a statute which creates an impermissible classification which bears no rational relation to a legitimate government objective is violative of the equal protection clause of the Fourteenth Amendment.

123. What the Loft law did was to reward a specific and identifiable group of tenants for their wrongdoing by retroactively transferring to them a bundle of property rights, and then compelling a select group of commercial building owners to provide lifetime subsidies to these lawbreakers in the form of costly building improvements, controlled rents, and the forced dedication of the building to the tenants' control.

124. Although the Loft Law was allegedly enacted to alleviate a housing emergency, the application of Article 7-C to the owners of buildings classified as interim multiple dwellings and not to other commercial and/or residential property owners rests on grounds wholly irrelevant to the achievement of the state's objectives.

125. Moreover, although the Owner and other commercial loft landlords subject to the Loft Law have not been convicted of any crime, these severe punishments have been inflicted upon them by the New York State Legislature in violation of the Bill of Attainder Clause of the United States Constitution.

126. The economic impact on the affected owners is devastating. This commercial building owner will be compelled to undertake renovations costing up to Two Million Dollars,

and is the consigned to the arbitrary and capricious limitations on income set by the Loft Law. The building is subjected to the most strict form of rent control and is consequently drastically diminished in value, and the Owner is forever stripped of his property rights in the fixtures and numerous other basic property rights. These economic burdens are further compounded by the confiscation of the Owner's property rights to decide the lawful use to which the building will be put; to choose its tenants; and to negotiate the terms of its leases and even to collect rent for an extended period of time.

127. Not only is the punishment severe, but it is also inescapable. The Loft Law, originally contained a speculative and illusory "hardship exemption," but those provisions expired, and are no longer available to owners like the plaintiff whose buildings have recently been determined to be covered by the law. Consequently, even though compliance with the Loft Law will cause a devastating economic hardship, there is no statutory basis for avoiding compliance. Moreover, no hardship exemption has ever been granted.

CONCLUSION

128. For all of the foregoing reasons, it is respectfully requested that this Court grant the plaintiff's motion for summary judgment on all of the constitutional claims asserted in Counts 1 through 9 of the complaint together with such other relief as to this Court seems just.

/s/ MARTIN R. FINE

Sworn to before me this
28th day of June, 1989

/s/ Eric H. Gruber
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

640 BROADWAY RENAISSANCE COMPANY, a New York Partnership : AFFIDAVIT IN OPPOSITION TO CROSS-MOTION

Plaintiff, :

-against- :

MARIO CUOMO, as Governor of The State of New York, :

----------X

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

MARTIN R. FINE, being duly sworn, deposes and says:

* * *

7. Rather than change the law so as to encourage the *permissive* conversion of loft buildings, instead the City and the State adopted a program which made such conversions *compulsory and confiscatory*. The compulsion includes the fact that if an owner does not convert, he cannot remove the illegal residential tenants from possession, and for as long as the illegal conditions created by the tenants' occupancy exist, the owner cannot collect rent and, without rent, will lose the building by City confiscation.

* * *

10. Any claimed "emergency" which may have existed, was totally self-created by the loft tenants' utter disregard for the clear provisions of law and their leases. In the plaintiff's case, the residential use of the lofts was prohibited both by zoning, fire, safety and building laws. In disobeying these laws and in dishonoring their leases, the tenants created any "emergency" which may have existed. The truth of the matter is that the only "emergency" was that the tenants' leases had expired by their own terms, which the tenants did not like.

* * *

12. If there was any "emergency," it was caused by the deliberate and illegal acts of the very same tenants who now claim lifetime residential estates in the plaintiff's commercial building based solely upon their illegal use and occupation under a short-term commercial lease.

13. But even if there was an "emergency," it is clear that it was not so wide-spread so as to constitute a "public" problem. Rather, the Loft Law represented an attempt by government to reward, for political reasons, an arbitrarily and pre-selected group of tenants for their own illegal activities.

14. That the purported emergency was not widespread, is evidenced by Paragraph 18 of the affidavit of Lee Fawkes in which he admits that since 1982, only 120 buildings have fully complied with the Loft Law, while another 290 have begun the legalization process. Moreover, a recent article in the *New York Law Journal* reported that there are nearly 650 loft buildings in New York City which are not in compliance with the Loft Law. Anderson, *Loft Landlords Limited on Suits for Back Rent*, N.Y.L.J., July 10, 1989, p. 1, col. 3. A copy of this article is annexed hereto as Exhibit "A." Thus, it appears that a total of only approximately 1,000 buildings are affected by the Loft Law out of the hundreds of thousands of buildings located in New York City.

15. Neither can it be disputed that the "covered" tenants were pre-selected for coverage. Despite the fact that the Loft Law took effect on June 21, 1982, it applied only to tenants who had been in residential occupancy during the period of April 1, 1980 through December 1, 1981.

* * *

17. Thus even before the Loft Law was enacted, the City knew the addresses of the affected buildings and the names of most, if not all, of the tenants who would be affected. Therefore, by definition, this was special interest legislation.

18. Furthermore, lists of buildings and affected tenants were compiled by an organization of loft tenants known as the Lower Manhattan Loft Tenants Association. This list was made available to the City and State government, who worked in conjunction with the Manhattan Loft Tenants Association to prepare the legislation which was ultimately adopted by the State Legislature.

* * *

36. It is a matter of public record that the Loft Board consists of a group of persons appointed by the Mayor of the City of New York, who serve at his whim and will. These politically-connected hacks do not represent the interests of property owners. To the contrary, the Loft Board has proven itself to be nothing more than a group of puppets whose strings are pulled by pro-tenant political interests in the City of New York.

37. On the *nine* (9) members on the Loft Board, only *one* (1) purportedly represents the real estate industry. Hence, persons such as labor leaders and loft tenants have been delegated the majority power to totally control the plaintiff's building. These individuals have been given the power to

dictate allowable rents, the duration of the leases, and the services that must be provided. In enacting the Loft Law, the State took away from the property owners the right to make these fundamental business decisions, and gave the right to persons having no economic interest in the building. Clearly, such a vast delegation of virtually all of the property owner's rights to an anti-owner political group constitutes a seizure in its most classic constitutional sense.

38. In reality, the deck was stacked against the plaintiff the day the Loft Board hearings began. As is virtually the case with every decision it makes, the Loft Board, by a vote of eight to one, ruled against the owner. The Owner never expected the Loft Board to do anything, other than issue such a one-sided,

* * *

49. The first deficiency in the defendants' argument is that just because the plaintiff became aware that the tenants had freely and voluntarily elected to flout the law by illegally living in their units, did not make such acts lawful.

50. The second deficiency in the defendants' analysis is that just because the plaintiff became aware that the tenants had freely and voluntarily elected to flout the law by illegally living in their units, did not make the leases any less enforceable than they were on the day that the tenants agreed to abide by the terms, covenants and conditions contained in those leases, which leases all contain "no waiver" and "no oral modification" clauses.

51. The most frightening deficiency inherent in the defendants' argument is that because the plaintiff became aware of the tenants' contemptuous disregard for law and lease, that in some perverse way, gave the state the right to seize the

plaintiff's property and to transfer it to the tenants. Apparently, the unspoken sentiment is that because the tenants violated the law and breached their leases, it is the plaintiff who should be punished, not because the plaintiff was the wrongdoer, but rather because it became aware of the wrongdoing

52. The attitude manifested by the defendants exemplifies what the plaintiff claims is fundamentally wrong with the Loft Law. Their entire argument is build upon a disregard of the fact, which is basic to the Loft Law, that loft tenants committed deliberate criminal acts by living in their units, and that as a result, it is the owner who is being punished by the confiscation and conscription of his building.

53. This is a classical example of a Bill of Attainder. Through no fault of its own, the plaintiff is being punished by an act of the legislature, without any trial for the deliberate wrongdoing of its tenants. Despite what the Governor-defendant says in his memorandum of law — that statutes have rarely been invalidated on this ground — does not mean that this Constitutional provision has any less force or effect than it did when it was inserted into the Constitution by the founding Fathers.

***

66. In 1980, two years before the enactment of the Loft Law, the City adopted the Relocation Incentive Program which *required* owners of loft buildings in certain areas of the City who *wanted* to convert their buildings to multiple dwellings to pay a substantial "conversion contribution" before they could obtain an alteration permit. In the case of 640 Broadway, this "contribution" would initially have amounted to $440,000.00. (Originally the "conversion contribution" was $4.50 *per square foot*, but it was raised to $9.00, the then to $11.00 per square foot.) Buildings required to pay the

"conversion contribution" were called "applicable buildings." In order to be an applicable building, space in the building must have been used for certain industrial purposes on August 31, 1980, or if vacant on that date, used for industrial purposes within three (3) years of that date. This included virtually every old commercial building in downtown Manhattan, including 640 Broadway.

* * *

68. With the enactment of the Loft Law in 1982, which *mandated* involuntary residential conversions, the very real possibility existed that the owners of loft buildings would have to pay *both* the costs of converting the building to a multiple dwelling, and the "contribution" to the relocation program.[3] To qualify for an exemption, an application had to be filed with the Board of Standards and Appeals by September 1, 1983, so on January 4, 1983, the plaintiff filed an application in order to avoid having to pay this so-called "contribution." It was *not* a change of use or zoning change application, and after the Loft Law was enacted, the plaintiff never filed any further variance of use or zoning change applications.

69. Annexed to that alteration application was a Building Department order which stated that 640 Broadway was an "applicable building," and that the plaintiff would have to make the "conversion contribution." *Thus, the alteration application was filed by the Owner for the sole purpose of avoiding the mandatory conversion contribution to the New York City Business Relocation Assistance Corporation.* A copy of the Building Department order is annexed hereto as Exhibit "B."

70. Notably, in the prior year, the plaintiff filed a required "preliminary application" under protest in which the Owner stated in part:

> "With respect to these premises, Sec. 15 of the Zoning Resolution as it appears to require 'conversion contributions' of $9.00 per square foot

[3] In order to avoid this double confiscation, the Loft Law was amended in 1987 to provide that buildings subject to the Loft Law would be exempt from paying any "conversion contributions." MDL §285(3).

> to be paid to the City is illegal and unconstitutional. By the execution of these documents, the undersigned in no way waives its rights to protest or seek judicial relief, or commence or maintain any other legal proceedings to declare that said extortionate fee being claimed by the City is illegal and unconstitutional and owner reserves all rights with respect thereto."

71. Thereafter, in *August of 1983*, the occupants of 640 Broadway filed their "coverage" application with the Loft Board. Almost five years later, on *April 28, 1988*, that application was granted, when twenty (20) units were found to be "covered" by the Loft Law. Despite of the the fact that the plaintiff only rented seventeen (17) units, twenty (20) were found to be covered by the Loft Law. The additional three (3) units came into existence in violation of the Building Code and the leases when the tenants "subdivided" units without the plaintiff's consent. ***

85. As originally enacted, the Loft Law contained a mechanism for exemption from coverage for those buildings for which compliance would cause an "unjustifiable hardship" (MDL §285(2)). However, the owners of buildings subject to the law were required to submit hardship applications to the Loft Board within nine (9) months of the establishment of the Loft Board. The City-defendants claim that the Loft Board notified the owners of buildings which "appeared to be subject to Article 7-C" of the June 30, 1983 deadline for hardship applications. (City Mem. Law, pp. 31-32).

* * *

88. Even more ludicrous was the legal requirement that the owners submit *sworn affidavits* speculating on the total cost of the building renovations and the other costs of compliance (*e.g.*, the cost of obtaining a zoning variance), as well as projecting the operating income and expenses *after* the conversion was complete. Obviously, compliance was impossible because all of these numbers were unknown. A copy of these so-called "hardship" regulations is annexed hereto as Exhibit "I."

***

101. Paragraphs 39 and 40 of the leases served a different purpose. Those paragraphs provided that if a tenant used a unit for a purpose which violated the law or which violated his or her lease, the tenant would indemnify plaintiff and hold it harmless from any claims, penalties, loss, damage or expense, including attorneys' fees.

102. In making the leases, the plaintiff never agreed to accept the tenants as anything other than commercial tenants. They were never accepted as residential tenants. Plaintiff prohibited them from being residential tenants. The plaintiff never agreed to provide the sort of services which would have to be provided to residential tenants. In determining the rent, which was freely negotiated, the plaintiff did not factor in the cost of providing residential services because the leases were commercial, not residential in nature. Neither did the rents reflect the enormous costs that would be involved in converting the building into a legal multiple dwelling, if that was even legally or structurally possible.

103. The standard leases at 640 Broadway were commercial in nature and were not residential for the following reasons:

a. Paragraph 4 required the *tenant* to make all non-structural repairs at *tenant's* sole cost and expense.

b. Paragraph 29 required the *tenant* to pay the costs of installing a sprinkler system if same became necessary, and to do everything else to comply with all applicable laws, building codes and regulations [also ¶ 6].

c. Paragraph 30 required the landlord to provide heat only on business days from 8:00 a.m. until 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m. The landlord *was not required to furnish heat in the evening, on Saturdays after 1:00 p.m. or on Sundays.*

***

g. Pursuant to Paragraph 41 the *tenant* was obligated to "replace all damaged or broken plate glass or other glass in or about the demised premises."

h. Pursuant to Paragraph 42 the *tenant* "at its sole cost and expense shall be solely responsible for and pay for all utilities and/or services used and required by tenant, including electricity and gas and water."

i. Pursuant to Paragraph 54 the landlord was entitled to periodic rent increases based upon increases in the Consumer Price Index.

j. Pursuant to Paragraph 66 the tenant "shall require all its contractors, plumbers and electricians to supply to the landlord a certificate of insurance naming the landlord as an additional insured prior to the commencement of any work by said contractor, plumber or electrician."

k. Paragraph 72 provides that the tenant agrees "to accept the demised premises 'as is' in its condition as of the date" of the lease.

* * *

104. The foregoing are the sorts of provisions found only in commercial leases. For the defendants to now contend that the occupants of 640 Broadway possess the lifetime rights of residential tenants, is to make a mockery of the leases and to totally destroy the plaintiff's property rights. In effect, they argue that it does not matter what the leases said. If the tenants want to violate the leases and numerous civil and criminal laws by living in their units, and if the government wants to step in and give its legal "stamp of approval" to such violations and grant lifetime estates to a retroactively selected group of individuals, arbitrarily defined, the landlord is powerless to object, or so the defendants would have this court believe.

105. An examination of the various court decisions, briefs and jurisdictionally statement in the *Spring Realty* case, shows that these contract provisions were not before the court in that case and accordingly, there is no reason to prevent this Court from deciding the very specific contract impairment claims which the plaintiff raises. Furthermore, no determination had been made in *Spring Realty Co.* that the buildings were covered by the Loft Law and therefore that case is irrelevant.

* * *

130. In addition, the City-defendants repeatedly state that the owners of interim multiple dwellings are "merely" expected to comply with "minimal housing standards." It seems naive in the extreme to consider "minimal," the mandatory and undisputed investment of Two Million Dollars which would be necessary to convert this 100-year-old commercial structure into a multiple dwelling.

these purported violations have since been corrected, the threat of future enforcement proceedings and harsh penalties is continuous and very real.

132. Clearly, the economic injury that is central to any ripeness inquiry is present in this case. The seizure of the building by the tenants is compounded by their persistent failure over the last several years to pay any rent or use and occupancy in reliance upon the Loft Law. At the present time, the Owner is owed rent, rent increases and use and occupancy in excess of $600,000.00.

133. There is nothing "abstract" about the uninvited physical occupation of the plaintiff's property by the present occupants. There is nothing "hypothetical" about the residential use of the premises in contravention of the commercial leases, the building's certificate of occupancy, the building code and local zoning laws. There is nothing more "concrete" than the illegal sublets, assignments and subdivisions that have taken place in some of the units without the Owner's consent, or the non-payment of rent over the past several years.

134. In conclusion, the plaintiff has already suffered severe economic injury; the threat of even greater future harm is imminent, the Loft Board's determination of coverage is final; the cost of compliance is exhorbitant; and the impossible to comply with "application" for a "hardship" exemption, previously illusory if not futile, is absolutely precluded by the expiration of such exemptions. It is therefore difficult to imagine a legal controversy which is more "ripe" for immediate judicial review. Furthermore, this case raises substantial federal questions which should be decided on the merits.

WHEREFORE, the plaintiff respectfully prays that its motion for summary judgment be granted, that the defendants'

APPENDIX FF

SUPREME COURT OF THE STATE OF NEW YORK;APPELLATE DIVISION; FIRST DEPARTMENT

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640 BROADWAY RENAISSANCE CO.

Plaintiff-Appellant

-against-

JOHN EISNER, et al,

Defendants-Respondents.

AFFIRMATION IN SUPPORT OF MOTION FOR REARGUMENT OR, ALTERNATIVELY, LEAVE TO APPEAL TO THE COURT OF APPEALS

BRUCE H. WIENER. . .

3. Reargument or, alternatively, leave to appeal to the Court of Appeals should be granted for several reasons. First, the Court inexplicably ignored the issues raised by the summary judgment motions, and relied solely upon the Tenants' attorneys's unsupported allegation (made in reply) that Renaissance "deliberately withdrew" its special permit application. Such an allegation, in fact, was not included in the Tenants' single affidavit (of the reputed leader of the Tenant's Association) submitted in support of their own motions. Thus, based upon the Tenants' attorney's submission, Renaissance was not obligated to come forward with proof regarding its special permit application, but rather submitted an affidavit denying all of the Tenants' baseless claims. Renaissance vehemently disputed Tenants' unsubstantiated claims regarding its "intent", thereby at least creating an issue of fact which warranted the denial of summary judgment. In fact, the accompanying affidavit of Joseph Pell Lombardi, Renaissance's architect, finally puts an end to the issue of Renaissance's withdrawal of the

special permit application and explains that it was done because of changes in the law. The Court inexplicably ignored the many issues of fact, and proceeded to determine the appeal as if this case were not a summary judgment case.

4. . . . The Court, however, failed to acknowledge that Renaissance registered the Building with the Loft Board in September, 1991 and renewed its registrations as required. Renaissance also timely filed an alteration application with the Department of Buildings in September, 1992 – prior to the October, 1992 deadline. Thus, the Court compounded the erroneous findings of the IAS Court that Renaissance had done nothing toward legalization, and all of Respondents' claims in that regard were sharply disputed by Renaissance and raised issues of fact which should not have been summarily disposed of by this Court.

. . .

7. . . .The leases have since expired but they all provided for the payment of rent on a monthly basis along with a yearly cost of living adjustment.

8. Most of the Tenants stopped paying rent to Renaissance in or about September 1988, . . . apparently in an effort to compel a sale of the Building or to force Renaissance into bankruptcy . . . As a result of the Tenants' rent strike, Renaissance was forced to file a petition in bankruptcy, seeking relief under the applicable provisions of the bankruptcy laws. . . .

. . . f.n. Contrary to the IAS Court's erroneous finding, Renaissance registered the Building with the Loft Board in September, 1991 . . . and renewed its registration in July, 1992 and thereafter. Renaissance also filed a timely alteration application with the Department of Buildings on September 26, 1992 . . .

. . .

17. Renaissance did, in fact, apply to the CPC for a special permit on June 3, 1983 . . ., but was later compelled to withdraw the application in October 1985, which had not been acted upon, because of changes in the law. See, accompanying affidavit of Joseph Pell Lombardi, which clearly puts this fabricated "issue" to rest. Prior to the application's withdrawal, the CPC had informed Renaissance that it would no longer continue to process such permit applications and directed Renaissance to withdraw the application. Thus, Renaissance did not withdraw its application in October 1985 because of the passage of the Loft Law in June 1982, within weeks of the application's filing. If Renaissance's motive, as the Tenants speculate, was to frustrate the Loft Law, then Renaissance could have immediately withdrawn its application the same month, upon the enactment of the Loft Law. The record irrefutably shows that it did not, and belies Tenants' purely speculative allegations.

. . .

18. . . . In any event, the 1992 amendments to the Loft Law, which do not require a special permit, superseded the 1988 Loft Board order, stating that coverage is contingent upon Renaissance's obtaining a special permit.

19. In addition, any requirement of a special permit was evidently eliminated by the 1987 amendments to the Loft Law, and subsequently confirmed in City of New York v. State of New York, Index No. 44141/88, decided October 27, 1989 (Gnarled, J.), aff'd, 171 A.D.2d 629, 568 N.Y.S.2d 323 (1st Dept. 1991). In that case the City wished, among other things, to enforce the Zoning Resolution requirement of a special permit, and claimed, in part, that the 1987 Loft Law amendments were unconstitutional and void because they effectively repealed the City Zoning Resolution requiring special permits for residential use in oversized buildings. This Court affirmed and upheld the 1987 Loft Law that apparently did away with the need for any special permit.

20. Thus, after the City of New York lawsuit, it became apparent that, by superseding state statute, the Loft Board did not have the power even to make coverage contingent upon Renaissance's obtaining a special permit, because such permits were no longer required by law. In addition, there is likewise no requirement for such special permit in the 1992 amendments to the Loft Law. Thus, because of the amendments, which clearly override the Loft Board order and do make clear that no special permit is required, Renaissance has not, and is not in violation of any law of Loft Law Order. . . .

. . .

23. Although the Court did not specifically state that the 1992 amendments are not retroactive, the Court did hold that Renaissance is not entitled to its benefits retroactively purportedly because Renaissance did not apply for a special permit. As demonstrated herein, a special permit is not required, and such requirement was eliminated even before the Tenants went on their "rent strike." At present, the only requirement is for the filing of an alteration application, which Renaissance filed so as to be fully entitled to the law's benefits.

. . .

28. The Court's Order and interpretation adversely affects the constitutional rights of landlords and their ability to collect past due rents, and be able to pay for legalization expenses and the maintenance of upkeep of their buildings. At the same time the Court's Order results in an undeserved windfall to the Tenants.

. . .

Dated: New York, New York
March 10, 1995

/s/
BRUCE H. WIENER

APPENDIX GG

SUPREME COURT OF THE STATE OF
NEW YORK; APPELLATE DIVISION;
FIRST DEPARTMENT

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640 BROADWAY RENAISSANCE CO.

Plaintiff-Appellant, INDEX x23830/82

-against-

JOHN EISNER, ET AL,

Defendants-Respondents.

AFFIDAVIT OF JOSEPH PELL LOMBARDI IN SUPPORT OF MOTION FOR REARGUMENT OR, ALTERNATIVELY, LEAVE TO APPEAL TO . . COURT OF APPEALS

STATE OF NEW YORK
COUNTY OF NEW YORK

JOSEPH PELL LOMBARDI, being duly sworn, deposes says:

. . .

2. I am . . . a registered architect and have performed architectural work for Renaissance since at least 1979 in connection with the building located at 640 Broadway, New York. . . When I first inspected the Building, it was a factory building which was virtually empty. Renaissance purchased the Building after a mortgage foreclosure at which time it was nearly abandoned and in terrible condition. Over the years since my first visit, the Building has been totally renovated by Renaissance and major capital improvements have been made.

3. In or about June, 1982, Renaissance filed a special permit application with the City Planning Commission ("CPC") pursuant to section 74-782 of the Zoning Resolutions (R.724). Renaissance withdrew that application in October 1985 (R.749).

. . .5. Although Renaissance, through me, withdrew its special permit application, it did not do so to thwart the legalization process in any way or for any nefarious purpose. Rather, Renaissance was compelled to withdraw the application because of changes in the law. Notably, Renaissance did not withdraw the application (in 1985) because of the passage of the Loft Law, as has been alleged by the Tenants, since the application was received by the CPC on June 3, 1982, and the Loft Law became effective only a few weeks later, on June 21, 1982.

6. Simply put, the CPC informed Renaissance that it would no longer continue to process such special permit applications, as jurisdiction had been transferred to the Board of Standards and Appeals. In fact, CPC informed Renaissance, by letter, that if the special permit application were withdrawn, it would be converted to an occupant-initiated Residential Loft Occupancy Determination Application. . . .

7. Hence, Renaissance was compelled to withdraw its application, and did not do so for the purpose of frustrating the legalization process. The withdrawal of the permit application was solely the result of changes in the law. Notably, the application was withdrawn over three (3) years after its submission, and the failure of the CPC to complete its processing.

8. In fact, Renaissance, which has long sine filed its alteration application and obtained a building permit, never needed to renew its special permit application because such a requirement was eliminated.

/S/ JOSEPH PELL LOMBARDI

Sworn to before me this
___day of March 1995.

APPENDIX HH

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:
FIRST DEPARTMENT

640 BROADWAY RENAIISANCE CO.,
Plaintiff-Appellant,

-against-

JOHN EISNER, et. Al.,

Defendants-Respondent,

-and-

15 Other Cases Consolidated for
Purposes of a Joint Appeal.

REPLY AFFIRMATION IN FURTHER SUPPORT OF MOTION FOR REARGUMENT OR, ALTERNATIVELY, LEAVE TO APPEAL TO THE COURT OF APPEALS.

New York County Clerk's Index No. 23830/92

BRUCE H. WIENER, an attorney duly admitted to practice in the courts of this State, under penalty or perjury, affirms as follows:

3. It is apparent that the Court did not consider many of Renaissance's arguments raised in its briefs on appeal inasmuch as the Order appeared to focus solely on the "red Herring" raised by Respondents' counsel – that Renaissance "deliberately withdrew" its special permit application. This Court, however, did not address the most important issue of fact as to the reason behind the withdrawal which, in and of itself, precludes summary judgment. Renaissance, in fact, was instructed by the city agency to withdraw its application and, as set forth herein, at the same time went forward with its application for a determination of loft occupancy, a necessary prerequisite to the issuance of any special permit.

4. Contrary to the record, the facts and the applicable law, the Court summarily affirmed the IAS Cvourt's erroneous "finding," based upon pure speculation of counsel, that Renaissance is not in compliance with the Loft Law because it "deliberately withdrew" its special permit application. Neither the Court nor the Respondents addressed the fact that the 1992 amendments to the Loft Law do not require the filing of a special permit application to be in compliance with the statute, and that the 1987 Loft Law amendments actually eliminated any such requirement.

5. Renaissance submits the affidavit of its architect Joseph P. Lombardi so that the issue of the "withdrawal" of the special permit can be put into proper perspective and demonstrated to be the total "red herring" that it is (and that it clearly cannot be the basis for summarily dismissing Renaissance's substantial rent claims). Mr. Lombardi's affidavit is based upon his person knowledge...

8. Respondents disregard the fact that the 1992 amendments to the Loft Law do not require the filing of a special permit application to be in compliance with the statute. Notably, neither the 1988 Loft Board Order which made coverage under the Loft Law "contingent" upon Renaissance's obtaining a special permit, nor the Loft Law itself, imposed any deadline for filing such application or obtaining siuch permit. In any event, the enactment of the 1987 and 1992 amendments did away with the requirement for a special permit such that "reapplication" for a special permit was rendered unnecessary.

9. Furthermore, the 1987 and 1992 amendments supercede the 1988 Loft Board Order so heavily relied upon by the Court. The fact that Renaissance withdrew the special permit application under instructions from the City Planning Commission ("CPC"), does not lead to the "inevitable conclusion" that Renaissance did not take all necessary and reasonable steps to legalize the Building. The affidavit of Mr. Lombardi is meant to challenge that rank assumption made by the IAS Court and affirmed by this Court.

10. Respondents do not even address the effect of the case of City of New York v. State of New York, Index No. 44141/88, decided October 27, 1989 (Nardelli, J.), aff'd, 171 A.D.2d 629, 568 N.Y.S.2d 323 (1st Dept. 1991). This case confirms that any requirement of a special permit was eliminated by the 1987 amendments to the Loft Law. Apparently unable to dispute the effects of this case, Respondents chose simply to ignore it and hope the Court would do the same. In any event, a special permit is no longer necessary.

11. ... the Court held that Renaissance could not "claim the benefits of the 1992 amendments to the statute" because it "withdrew its application for a necessary special permit . . . and then never sought to renew the application, despite a Loft Board order." Thus, despite the fact that the 1988 Loft Board Order did not direct the filing of a special permit application and, by that time, the Loft Law had been amended to delete such requirement, this Court based its decision on an erroneous finding that such special permit was necessary, and was required by Loft Board Order.

12. ...Despite these numerous attempts to clarify this issue, the Court relied solely upon the unsupported allegations of Respondents' counsel. Noticeably absent from any of Respondents' submissions was any affidavit from the Respondents themselves, or anyone with personal knowledge, in this regard.

14. Moreover, Respondents' claims that the withdrawal was "a deliberate effort to sabotage the legalization of the building," (Ratner Aff., Par.9,), made solely in an affirmation of Respondents' counsel (as are all of Respondents' claims in this regard", is a further fabrication by the Respondents. . .Second, Respondents ignore the fact that the CPC never processed the special permit application by the time it was withdrawn. Finally, although the special permit application may have been withdrawn, it cannot be disputed that Renaissance filed an application in 1983 for a Determination of Residential Loft Occupancy pursuant to the Zoning

Resolution, under CPC File #N83153OZJM, which was finally approved in October 1988 (See Exhibit "A". Thus, despite Respondents' disingenuous statements that Renaissance "sabotaged" the legalization process, the facts are to the contrary. By filing the application for a Determination of Residential Loft Occupancy with CPC, Renaissance was necessarily advancing, and by no means "sabotaging", the legalization process. A determination of loft occupancy was required before any special permit could have been processed and issued. By the time the determination of loft occupancy was finally made – October 1988 – the 1987 amendments to the Loft Law had already been enacted and were being challenged in the City of New York lawsuit. Thus, it can hardly be said that Renaissance was "sabotaging" the legalization process.

15. . . .The 1987 and 1992 amendments to the Loft Law do not require a special permit and certainly supersede the 1988 Loft Board Order. The 1988 Loft Board Order was issued during the three year period that the challenge to the 1987 Loft Law amendments was tied up in the court system. This unfortunate timing does not negate the law, however. Once the issue was resolved in the courts, by the City of New York case, it was established that a special permit was no longer required. It is axiomatic that the Loft Law superseded the 1988 Loft Board Order.

16. Both the Court and Respondents also ignore that Respondents unequivocally admitted in a prior litigation that the legalization timetables in the original Loft Law do not apply. They are, therefore, judicially estopped from now claiming otherwise.

Dated: New York, New York

March 24, 1995

Bruce H. Wiener

APPENDIX II - LOFT BOARD REGULATIONS MAY, 1983

LOFT BOARD

PURSUANT TO
SECTION 1105 OF THE
NEW YORK CITY CHARTER, Article 7-C of the Multiple Dwelling Law, and Mayor's Executive Order No. 66, The New York City Loft Board hereby promulgates the following Rules and Regulations Relating to Loft Board Procedures for Conducting Business and Considering Applications.

Regulations for Internal Board Procedures

I. Composition of the Board/Voting

1. The Loft Board (hereinafter referred to as "the Board") shall consist of 9 members, including an impartial Chair and one representative of loft manufacturing interests, one representative of the real estate industry and one representative of loft residential tenants, respectively. The other members, representing the public, shall include the Commissioner of the Department of Buildings, serving ex officio and may include one other member serving ex officio. The Board may conduct business with fewer than 9 members when one or more vacancies are created by the death, resignation, or inability of a member or members to continue serving on the Board for any reason, until the appointment of replacement(s) by the Mayor.

2. Each member of the Board shall have one vote. No members, except those serving ex officio, may vote by proxy or have another person serve on the Board in their absence Representatives of the special interest groups, specified in paragraph 1, supra, may in their absence, designate substitutes to participate in discussions at the Board meetings, when the Board, by vote requests such participation. Such designated substitutes may participate only to the extent permitted by the Board and shall not have the right to vote.

* * *

II Rules and Regulations

4. The Board shall issue rules and regulations governing its procedures and the exercise of its powers under Article 7-C of the New York State Multiple Dwelling Law and Executive Order No. 66 of Mayor Edward I. Koch. Loft Board staff shall be responsible for drafting rules, regulations, guidelines and procedures at the direction of the Chair or by vote of the Board. In addition, draft rules, regulations, guidelines and procedures may be presented to the Board for consideration by Board members or other interested parties. Loft Board staff shall comply with Section 1105 of the New York City Charter in the promulgation of all rules and regulations. All draft rules and regulations proposed shall be submitted to the Board for comment and review before they are published for comment. Draft rules and regulations may be modified at the direction of the Chair or by vote of the Board. In case of disagreement between the Chair and at least four (4) members of the Board, alternative versions may be published. Upon vote of the Board, rules and regulations shall be adopted and ordered into effect following periods for public notification and comment, mandated by Section 1105 of the New York City Charter, and hearings when required by Section 282(d) of Article 7-C of the New York State Multiple Dwelling Law, except that emergency regulations or guidelines may be adopted without prior public notification and comment.

IX. Action by the Board on Its Own Initiative

30. The Board on its own initiative may commence appropriate proceedings or investigations pursuant to its powers or duties under Article 7 C of the Multiple Dwelling Law, including, but not limited to, findings, determinations or enforcement proceedings concerning coverage, hardship claims, rent adjustments, fixture fee disputes, exemptions and compliance with requirements of Article 7 C, including the the minimum housing maintenance standards promulgated by the Board. Prior to making a finding or determination pursuant to Article 7 C, the Board shall afford the party against whom a proceeding is directed an

opportunity to be heard on not less than 10 days notice by regular mail.

I do hereby certify that good cause exists for waiving the requirement that thirty days shall first elapse after publication in THE CITY RECORD and that the foregoing Regulations shall be come effective on the date of publication.

Dated: May 6, 1983

Filed with the City Clerk: May 9, 1983